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Workmen's Compensation Law

of the

STATE OF NEW YORK

Revised, With Amendments, May, 1916

Amendments Effective June 1, 1916

AMERICAN MUTUAL COMPENSATION INSURANCE COMPANY
18 East 41st Street, New York, N. Y.

Workmen's Compensation Law

of the

State of New York

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EFFECT OF THE 1916 AMENDMENTS TO THE WORKMEN'S COMPENSATION LAW AND SUPPLEMENTARY LAWS

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I. WORKMEN'S COMPENSATION LAW

1. SYSTEM PROVIDED FOR

The scope of the Act is extended so as to enable any employer not formerly subject to the Act to come within its provisions by joint election with any employee (§2). For mode of election, *see Digest, infra,* under head "HOW ELECTED."

2. EMPLOYMENTS COVERED

(a) *By Compulsion.*—The definition of the term "employee" is enlarged so as to cover any employee *in the service* of an employer whose principal business is that of conducting a hazardous employment. Formerly the Act applied only to employees actually engaged in a hazardous employment (§3 [4]).

The hazardous employments in the various groups are extended (§2) so as to include the following:

Group 2. Repair of railways not included in group one.

Group 7. Repair of telegraph and telephone lines not included in groups five and six.

Group 8. Marine wrecking.

Group 11. Subaqueous or caisson repair.

Group 12. Repair of electric light and electric power lines, dynamos, or appliances, and power transmission lines.

Group 13. Road building, curb and sidewalk construction or repair; sewer and subway repair; street cleaning, ashes, garbage or snow removal; operation of water works.

Group 14. Bark mills; lumber yards; manufacture of barrels, kegs, vats and tubs.

Group 17. Cork cutting.

Group 18. Oil and gas wells.

Group 19. Manufacture of asbestos; stone crushing or grinding.

Group 21. Machine shops, including repairs.

Group 22. Operation and repair of freight and passenger elevators, not included in other groups; window cleaning; heating and lighting.

Group 23. Manufacture of screws; jewelry; gold, silver and plated ware; articles of bone, ivory and shell. (Manufacture of screens is taken out of this group, but retained in group seventeen.)

Group 24. Blacksmiths; horseshoers.

Group 25. Ice harvesting, ice storage and ice distribution.

Group 26. Manufacture of other [than printing] ink.

Group 27. Bottling.

Group 28. Sewerage disposal plants.

Group 29. Storage of all kinds and storage for hire.

Group 30. Meat markets; manufacture or preparation of gelatine, paste or wax.

Group 32. Furriers.

Group 33. Manufacture of dairy products.

Group 38. Manufacture of other articles [than those enumerated] from textiles or fabrics.

Group 40. Engraving; manufacture of moving picture machines and films.

Group 41. Public garages, livery, boarding or sales stables; movers of all kinds.

Group 42. Steel building and bridge repair; repair of elevators, fire escapes, boilers, engines or heavy machinery; papering, picture hanging and glazing; construction, repair and demolition of other structures than buildings and bridges; salvage of buildings or contents; sanitary lighting or heating installation or repair (instead of "sanitary or heating engineering"); junk dealers.

Group 43. Any employment enumerated in the foregoing groups and carried on by the State or a municipal corporation, etc., even though not for pecuniary gain. (This does not change the old law except to remove the inconsistency of including public employments while at the same time limiting employments covered to those carried on for pecuniary gain.)

It is further provided that "manufacture," "construction," "operation" and "installation" shall include "repair," "demolition" and "alteration" (§3 [13]).

(b) *By Joint Election.*—A new clause is added to Section 2, under which any employer not carrying on any of the hazardous employments enumerated therein, or who, carrying on one of such employments, has in his employ a person not included within the term "employee" as defined by Section 3, may by joint election with any employee become subject to the Act. (*See Digest, infra,* "HOW ELECTED.") The employments which may thus be brought under the Act by joint election are not limited to such as are carried on by the employer for pecuniary gain (§3 [5]).

3. PARTIAL DISABILITY

The thumb, finger, toe, and phalange are added to the list of members, the permanent loss of the use of which is to be considered as the equivalent of the loss of such member. Provision is newly made for compensation not to exceed $3,500, in the discretion of the Commission, for an injury resulting in serious facial or head disfigurement (§15 [3]).

The maximum compensation for temporary partial disability is fixed, as before, at $3,500, but is further limited so as not to exceed, when combined with the employee's decreased earnings, the amount of wages received prior to the injury (§15 [4]).

4. TOTAL DISABILITY—PREVIOUS DISABILITY

Subdivision 7 is added to Section 15, providing that if an employee who has previously been partially disabled through the loss of a hand, an arm, a foot, a leg or an eye, incurs permanent total disability through the loss of another member or organ, he shall receive, after the cessation of the regular payments for permanent partial disability, and in addition thereto, special compensation of 66 2/3% of his average weekly wages for the rest of his life. For such additional payments a special fund is to be created by requiring insurance carriers to pay to the State Treasurer for every case of injury causing death in which there are no dependents, the sum of $100 (§15 [7]).

5. DEATH BENEFITS

Death benefits are now payable to grandchildren, brothers, sisters, parents and grandparents if there be no surviving wife (or dependent husband) or child under eighteen, instead of as formerly, only where the pay-

ments to spouse and children amount to less in the aggregate than 66 2/3% of deceased's average wages; and the compensation to each dependent parent or grandparent in such a case is increased from 15 to 25 per cent of the average wages (§16 [4]).

A new provision requires insurance carriers to pay to the State Treasurer, in every case of death where there are no dependents, the sum of $100 (§15 [7]).

See also caption 13, "MINORS AND INCOMPETENT PERSONS."

6. DEPENDENTS

The definition of the term "child" is extended so as to include a dependent step-child (§3 [11]).

7. NON-RESIDENT ALIENS

Dependents residing in any foreign country are limited to wife and children or, if there be none of these, to parent or grandparent wholly or partly dependent upon deceased for a year prior to accident (§17).

8. APPEAL

(a) *To Appellate Division.*—The Commission is now empowered, in its discretion, to certify to the Appellate Division of the Supreme Court, Third Department, upon the application of either party, questions of law involved in its decision, even where the claim is made against the State Fund, instead of as formerly, only where the claim was not against the State Fund (§23).

(b) *To Court of Appeals.*—An appeal may now be taken to the Court of Appeals without the consent of the Appellate Division or a judge of the Court of Appeals, in all cases where the decision of the Appellate Division is not unanimous. It is further newly provided that it shall not be necessary to file exceptions to the rulings of the Commission; and that the Commission need not file a bond upon an appeal by it to the Court of Appeals (§23).

9. COMMUTATIONS.

The moneys paid into the State Fund by employers or insurers who have been permitted or required to discharge their liability for compensation in any particular case on the commutation plan, are to constitute an aggregate trust fund, to be kept separate and apart from all other moneys of the State Fund, and not to be liable for any expenses of administration other than those incurred in the administration of such trust fund. Any lump sum paid into this fund must include, in addition to the amount payable to the beneficiary, a sum sufficient to cover such expenses of administration (§27).

10. PREFERENCE

The preference or lien against the assets of the employer which attaches to the right of compensation granted by the Act is extended to any awards made thereunder (§34).

11. HOW COMPENSATION IS SECURED

Employers who carry private insurance are no longer required to file with the Commission a copy of the contract or policy of insurance; but the

notice of such insurance to be filed with the Commission must contain information regarding the policy as the Commission may require (§50 [2]).

The permission granted to an employer to secure his liability by furnishing proof of financial ability, etc., may be revoked by the Commission at any time for good cause shown (§50 [3]).

Failure to secure the payment of compensation is made a misdemeanor, in addition to the civil penalties previously attaching to such default (§52). *See caption* 18, "PENALTIES."

12. METHOD OF PAYMENT AND PROCEEDINGS TO COLLECT

The employer, as well as the insurer, may now be made a defendant in an action instituted by the Commission for the recovery of a liquidated claim for damages resulting from default in payment of compensation within ten days after demand (§26). A new paragraph is added to this section, which provides that upon the employer's default in payment for a period of thirty days, any party in interest may file with the county clerk a certified copy of the Commission's decision awarding compensation, or changing the terms of a previous award, whereupon judgment must be entered in the Supreme Court in conformity with such decision, which shall have the same effect as a judgment duly rendered in a suit determined by such court, except that there shall be no appeal therefrom (§26).

See also caption 4, "TOTAL DISABILITY—PREVIOUS DISABILITY," and *caption* 13, "MINORS AND INCOMPETENT PERSONS."

13. MINORS AND INCOMPETENT PERSONS

A minor employee is to be deemed *sui juris* for the purpose of making the election to come under the Act now made available to employees not engaged in hazardous employments (§2).

Where death benefits are payable to a minor child, the Commission may require the appointment of a guardian for the purpose of receiving such compensation; but unless the Commission so requires, the appointment of a guardian for such purpose is not necessary (§16 [2]).

A new clause is added to Section 29, which provides that where the dependents of an employee killed by the negligence or wrong of a third party are minors, the election to take compensation and the assignment of the cause of action against such third party, or the notice of election to pursue a remedy against the latter, as the case may be, is to be made by such minor or by his parent or guardian, as the Commission may determine by rule in each case (§29).

14. WHERE INJURY IS CAUSED BY THIRD PARTY

The term "employee," in Section 29, is substituted for "workman," thus bringing the term within the definition of "employee" in Section 3; and the several references to the "person, association or corporation" liable for compensation, are amplified by the inclusion of the term "insurance carrier."

See also caption 13, "MINORS AND INCOMPETENT PERSONS."

15. LIABILITY FOR DAMAGES

The liability of an employer for compensation is made to exclude any other liability whatsoever, to the employee, his [or her] personal representatives, husband, parents, dependents, next of kin or anyone otherwise entitled

to recover damages at common law or otherwise, on account of the employee's injury or death (§11). This precludes the recovery of damages by the parent or husband of a minor employee for injury or death on the ground of loss of services.

The right of action for damages against an employer who has failed to secure compensation is extended to the legal representatives of a deceased employee, as well as to his dependents, in case of injury resulting in death (§52).

16. POSTING NOTICES

Employers to whom the elective features of the Act are applicable are required to signify their election by posting notices at the place of employment, in addition to filing written notice thereof with the Commission (§2).

17. INSURANCE

(a) *General Provisions.*—In the paragraph relating to the cancellation of insurance contracts, the term "insurance carrier" is substituted for the words "stock company or mutual association," thus bringing the State Fund within the provisions of this subdivision, subject to the special proviso that the right to cancel a policy in the State Fund is to be exercised only for non-payment of premiums. The notice required to be given prior to the cancellation of such contracts is referred to as a "notice of cancellation" instead of as formerly, a "notice of intention to cancel" (§54 [5]).

Insurance carriers are permitted to issue policies covering, in addition to employees, employers who perform labor incidental to their occupations, subject to certain restrictions as to the estimation of their wage values (§54 [6]).

A new section, numbered 77, is added to Article 4 (*inadvertently designated "article seven" in the amendatory law*), which provides for an annual assessment on all insurance carriers, including the State Fund, to reimburse the State treasury for the expenses incurred by the Commission in the administration of the Act during the preceding fiscal year. The amount of such assessment is to be in direct ratio to the amount of compensation or payments made by each insurance carrier during the preceding fiscal year, and the first assessment is to be made and collected as soon as practicable after July 1, 1917. A similar provision was contained in the old law, but it was incorporated in Section 94, Article 5, relating to State insurance, although manifestly intended to be applicable to all insurance carriers. Under the provisions of Section 94, which have been stricken out in the amended form of this section, such assessment was to be made first as soon as practicable after December 31, 1917, for the preceding calendar year, to cover only the expense incurred in connection with the examination, determination and payment of claims, and to be added to the payments required from insurance carriers in the settlement of claims during the ensuing year.

See also caption 11, "HOW COMPENSATION IS SECURED."

(b) *State Insurance.*—The Commission is required to set up "reserves" (instead of "a reserve") adequate to meet anticipated losses, etc.; and it is further newly provided that such reserves are to be computed in accordance with rules to be approved by the Superintendent of Insurance (§92).

The classes of securities enumerated in Section 93, as amended, in which the surplus or reserves of the State Fund may be invested, are substituted for "securities and investments authorized for investment by savings banks" (as provided in the old law). Such funds may be loaned on the

pledge of, as well as invested in, any of the securities mentioned. The resolution of the Commission providing for such investment or loan, or for the sale of any of the securities purchased, must be approved by the Superintendent of Insurance, instead of by the Comptroller, as formerly (§93).

The expense of administering the State Fund is to be refunded to the State treasury by the Commission beginning with the month of July, 1917, and annually thereafter in such month, for the preceding fiscal year, instead of beginning with the month of January, 1918, and annually thereafter, for the preceding calendar year. Such expenses are to be inclusive of the expense incurred in the examination, determination and payment of claims, instead of being exclusive of such item, as before. As noted above, under *"General Provisions,"* the assessment provision has been eliminated from Section 94 and re-enacted, with some modifications, as a new section numbered 77 (§94).

A new provision is added to subdivision 3 of Section 97, whereby the Commission is empowered to pay a dividend to an employer who has withdrawn from the State Fund in any case where he would have become entitled to such dividend if he had remained in the Fund.

One of the earlier drafts of the amendatory law eliminated from Section 100 the provision for assessments on employers withdrawing from the State Fund; but the provision was restored verbatim in the final draft of the bill as passed by the legislature and signed by the Governor, thus resulting in the re-enactment of Section 100 without change. The assessment clause having thus received the direct and positive sanction of the legislature, the argument sometimes advanced that it was enacted inadvertently, is clearly no longer tenable.

A new section, numbered 106, is added to Article 5, which requires the Commission to report to the Superintendent of Insurance concerning the State Fund in accordance with Section 192 of the Insurance Law, and empowers the Superintendent of Insurance to examine into the condition of the Fund at any time (§106).

18. PENALTIES

Failure to secure the payment of compensation is made a misdemeanor (§52). No specific punishment being prescribed, Section 1937 of the Penal Law is applicable, imposing a punishment of a year's imprisonment or $500 fine, or both, upon conviction of a misdemeanor.

19. MISCELLANEOUS

Section 75, requiring the Commission to make annual report to the legislature, has been re-enacted without change.

20. REPEALER

The amendatory law (Section 15) repeals all acts and parts of acts inconsistent therewith. The addition of the elective feature, covering all employments not embraced within the compulsory provisions, would seem to render superfluous in the main, the old compensation law of 1909 (Employers' Liability Law, Ch. 31 of the Consolidated Laws), although it is to be noted, however, that the compensation provisions of the latter law are available to farm laborers and domestic servants, while such employees are expressly excluded from the benefits of the Workmen's Compensation Law proper (§3 [4]).

II. INSURANCE LAW*

1. DIVIDENDS

A dividend declared by the directors of a mutual employer's liability and workmen's compensation corporation now requires the approval of the Superintendent of Insurance before becoming effective (§190).

2. FOREIGN MUTUAL CORPORATIONS

A foreign mutual insurance corporation writing employers' liability or workmen's compensation insurance is required to maintain a surplus over and above all liabilities, including unearned premiums and loss reserves, of at least $100,000; otherwise its certificate of authority is subject to revocation by the Superintendent of Insurance (§194).

*This synopsis covers only the amendments to that portion of the Insurance Law which is reprinted in this pamphlet.

Digest of the New York Workmen's Compensation Law*

TITLE, ETC.

Chapter 816, Laws of 1913, as re-enacted by Chapter 41, Laws of 1914, and amended by Chapter 316, Laws of 1914, effective July 1, 1914; by Chapters 167 and 168, Laws of 1915, effective April 1, Chapter 615, effective May 12, and Chapter 674, effective May 22, 1915; and by Chapter 622, effective June 1, 1916; being "Chapter 67 of the Consolidated Laws," and entitled "Workmen's Compensation Law."

SYSTEM PROVIDED FOR

Compensation with insurance or proof of financial responsibility, compulsory as to the hazardous employments enumerated (§§10, 50); elective as to others (§2). Supervised by State Industrial Commission, superseding, on May 22, 1915, the Workmen's Compensation Commission (Art. IV; Ch. 674, §§4-7).

HOW ELECTED

(Applies to non-hazardous employments only.)

Employer elects by posting notice at place of employment and by filing with the Commission a written statement of acceptance in a prescribed form. Employee is deemed to have accepted in the absence of written notice to the contrary given to the employer and filed with the Commission at the time of hiring or within twenty days after employer's election (§2).

HOW ELECTION CHANGED

(Applies to non-hazardous employments only.)

Employer may withdraw his election by filing written notice with the Commission at least sixty days prior to the expiration of any yearly period (§2). No provision for change of employee's election.

ALTERNATIVE LIABILITY

No provision as to alternative liability of employer who, not being subject to the compulsory features of the Act, does not elect to come thereunder.

EMPLOYMENTS COVERED

Public and private, in the service of an employer whose principal business is that of conducting any of the hazardous employments enumerated for pecuniary gain, except farm labor and domestic service (§§2, [3-5].

*The headings of this Digest conform in substance and order with those of the "Digest of Workmen's Compensation Laws in the United States and Territories" (compiled by F. Robertson Jones and published by the Workmen's Compensation Publicity Bureau, 80 Maiden Lane, New York City)—so that the former supplements the latter.

Non-hazardous employments may be brought under the Act by joint election (§2). *Kenny v. Union Ry. Co.*, 152 *N. Y. S.* 117; *De La Gardelle v. Hampton Co.*, 153 *N. Y. S.* 162; *Smith v. Price, id.* 221; *McQueeney v. Sutphen & Hyer, id.* 554; *Kohler v. Frohmann, id.* 559; *In re Rheinwald, id.* 598; *Costello v. Taylor*, 217 *N. Y.* 179, 111 *N. E.* 755; *Powley v. Vivian & Co.*, 154 *N. Y. S.* 426; *Bargey v. Massaro Macaroni Co.*, 155 *N. Y. S.* 1076; Group 1—*De Voe v. N. Y. State Rys.*, 169 *A. D.* 472, 155 *N. Y. S.* 12; Group 8—*Edwardsen v. Jarvis Lighterage Co.*, 168 *A. D.* 368, 153 *N. Y. S.* 391; Group 10—*Jensen v. Southern Pacific Co.*, 215 *N. Y.* 514; *Tomassi v. Christensen*, 156 *N. Y. S.* 905; Group 11—*Mazzarisi v. Ward & Tully*, 156 *N. Y. S.* 964; Group 28—*Tamassi v. Christensen*, 156 *N. Y. S.* 905; *Larsen v. Paine Drug Co.*, 155 *N. Y. S.* 759; Group 29—*Mihm v. Hussey*, 155 *N. Y. S.* 860; *Sickles v. Ballston Storage Co.*, 156 *N. Y. S.* 864; Group 30—*Newman v. Newman*, 155 *N. Y. S.* 665; Group 33—*Aylesworth v. Phoenix Cheese Co.*, 155 *N. Y. S.* 916; Group 41—*Hendricks v. Seeman Bros.*, 155 *N. Y. S.* 638; *Newman v. Newman, id.* 665; *Wilson v. Dorflinger, id.* 857; *Dale v. Saunders Bros.*, 157 *N. Y. S.* 1062; Group 42—*Gleisner v. Gross & Herbener*, 155 *N. Y. S.* 946.

EMPLOYMENT IN INTERSTATE COMMERCE

Act applies to employers and employees engaged in intrastate, and also in interstate or foreign commerce, for whom a rule of liability or method of compensation is established by Congress, only to the extent that their mutual connection with intrastate work is distinguishable from interstate or foreign commerce; but such employer and his employees working only within the State may, subject to approval by Commission and so far as not forbidden by act of Congress, accept provisions of Act (§114). *Edwardsen v. Jarvis Lighterage Co.*, 153 *N. Y. S.* 391; *Winfield v. N. Y. C. & H. R. R. Co.*, *id.* 499, *affd.* 216 *N. Y.* 284; *Jensen v. Southern Pacific Co.*, 215 *N. Y.* 514; *Moore v. Lehigh Valley R. Co.*, 154 *N. Y. S.* 620; *Fairchild v. Penna. R. Co.*, 155 *N. Y. S.* 751; *White v. N. Y. C., etc., R. Co.*, 169 *A. D.* 903, *affd.* 216 *N. Y.* 653.

INJURIES COVERED

Accidental personal injuries arising out of and in course of employment, and such disease or infection as may result therefrom, unless due to intent to injure self or another or to intoxication while on duty (§§10, 3 [7]). *Shinnick v. Clover Farms Co.*, 152 *N. Y. S.* 649; *Smith v. Price*, 153 *N. Y. S.* 221; *Fredenburg v. Empire United Rys.*, 154 *N. Y. S.* 351; *Moore v. Lehigh Valley R. Co., id.* 620; *Powley v. Vivian & Co., id.* 426; *De Voe v. N. Y. State Rys.*, 155 *N. Y. S.* 12; *Hendricks v. Seeman Bros., id.* 638; *Newman v. Newman, id.* 665; *De Filippis v. Falkenberg, id.* 761; *Kingsley v. Donovan, id.* 801; *Plass v. Central N. E. Ry. Co., id.* 854; *Martucci v. Hills Bros. Co.*, 156 *N. Y. S.* 833; *Rist v. Larkin & Sangster, id.* 875; *Collins v. Bklyn. Union Gas Co., id.* 957; *Mazzarisi v. Ward & Tully, id.* 964; *Dale v. Saunders Bros.*, 157 *N. Y. S.* 1062; *White v. N. Y. Central R. Co.*, 169 *A. D.* 903, *affd.* 216 *N. Y.* 653.

NOTICE OF INJURY AND CLAIM FOR COMPENSATION

Written notice containing prescribed particulars must be served on employer and Commission within 10 days after disability or 30 days after death. Failure to do so bars claim, unless excused by Commission (§18). Claim must be made within one year after injury or death (§28).

WAITING PERIOD

No compensation allowed for first fourteen days of disability (§12).

MEDICAL AND SURGICAL AID

Such medical aid, including crutches, apparatus, etc., as required or requested by employee, must be furnished by employer during 60 days after injury. Charges therefor are subject to regulation by Commission and limited to those that prevail in community for similar treatment of persons of like standard of living (§13).

COMPENSATION FOR TOTAL DISABILITY

Sixty-six and two-thirds per cent. of average weekly wages; maximum $15, minimum $5, or full wages, per week; if permanent, for life; if temporary, during disability but not to exceed in aggregate $3,500. Certain severe injuries presumed to constitute permanent total disability (§15 [1, 2, 5, 6]). *Schwab v. Emporium Forestry Co.,* 153 *N. Y. S.* 234, *affd.* 216 *N. Y.* 712; *Fredenburg v. Empire United Rys.,* 154 *N. Y. S.* 351, 168 *A. D.* 618.

COMPENSATION FOR PARTIAL DISABILITY

Special schedule for certain injuries in lieu of other compensation; for loss of a hand, arm, foot, leg or eye, maximum $20, minimum $5 or full wages per week. In other cases, 66 2/3% of reduction in earning capacity during disability. Except for injuries specified above, maximum $15, minimum $5 or full wages, per week; but in case of temporary partial disability not to exceed in aggregate $3,500 or, when combined with decreased earnings, amount of wages at time of injury (§15 [3-6]). *In re Petrie,* 151 *N. Y. S.* 307; 215 *N. Y.* 335; *Fredenburg v. Empire United Rys.,* 154 *N. Y. S.* 351; *Rockwell v. Lewis, id.* 893; *Cunningham v. Buffalo Rolling Mills,* 155 *N. Y. S.* 797; *Feinman v. Albert Mfg. Co., id.* 909.

COMPENSATION FOR DEATH

Reasonable funeral expenses, maximum $100. 30% of wages to wife or dependent husband during widowhood or dependency (two years' benefits to widow upon remarriage), and 10% additional for each child under 18. If there be no widow or dependent widower, 15% to each child. 15% each to dependent grandchildren, brothers and sisters under 18 and 25% each to parents and grandparents, subject to preference of widow or dependent widower and children for their full benefits. Total limited to 66 2/3% of wages. Excess of wages over $100 per month not to be reckoned in computing death benefits (§16). If there are no dependents, $100 must be paid to State Treasurer for special fund mentioned under "PREVIOUS DISABILITY," *infra.* (§15 [7]). *Friscia v. Drake Bros. Co.,* 153 *N. Y. S.* 392; *Woodcock v. Walker,* 155 *N. Y. S.* 702; *Walz v. Holbrook, etc., Corpn., id.* 703.

EFFECT OF PREVIOUS DISABILITY

Previous disability is not to preclude compensation for later injury nor for death resulting therefrom; but in determining compensation for later injury or death, average weekly wages to be such sum as reasonably represents earning capacity at time of later injury. Compensation for later injury not to exceed amount allowed for such injury considered by itself and not in conjunction with previous disability (§15 [6]). Where total disability results from the loss of a member or organ ensuing upon the previous loss of a hand, arm, foot, leg or eye, additional compensation of

66 2/3% for life is payable out of a special State Fund created for that purpose (§15 [7]). *Schwab v. Emp. Forestry Co.,* 153 *N. Y. S.* 234, *affd.* 216 *N. Y.* 712.

AVERAGE WAGES—HOW COMPUTED

Average weekly wages to be 1/52 of average annual earnings; later to be 300 times average daily wage during preceding year, if employed substantially the whole year, otherwise 300 times average daily wage of another employee in same occupation and locality. If injured employee is a minor whose wages would normally be expected to increase, this fact may be taken into consideration (§14). Wages to include reasonable value of board, lodging, etc. (§3 [9]). *Fredenburg v. Empire United Rys.,* 154 *N. Y. S.* 351; *Kilberg v. Vitch,* 156 *N. Y. S.* 971.

WHO ARE DEPENDENTS

Dependency not defined; to be determined in accordance with conditions at time of accident. Beneficiaries are limited to widow or dependent widower, children (posthumous, legally adopted and step-children included), dependent grandchildren, brothers and sisters under 18 years of age and dependent parents and grandparents (§§3 [11], 16). *Friscia v. Drake Bros. Co.,* 153 *N. Y. S.* 392; *Hendricks v. Seeman Bros.,* 155 *N. Y. S.* 638; *Walz v. Holbrook, etc., Corpn., id.* 703; *Rhymer v. Hueber Bldg. Co.,* 156 *N. Y. S.* 903.

NON-RESIDENT ALIENS

Compensation to aliens not residents (or about to become non-residents) of the United States or Canada, to be the same as provided for residents; but Commission may, or upon application of insurer, must, commute future installments to a lump sum equal to one-half the present value thereof. Dependents residing in any foreign country are limited to wife and children or, if there be none of these, to parent or grandparent wholly or partly dependent upon deceased for a year prior to accident (§17).

MEDICAL EXAMINATION

Injured employee must submit to medical examination from time to time when requested by Commission, as may be provided by its rules. Insurer and employee may have their respective physicians present. Refusal to submit forfeits the right to compensation for period of refusal (§19).

SETTLEMENT OF CLAIMS AND DISPUTES

After expiration of first 14 days of disability, terms of compensation may be settled by agreement between employer and employee, subject to approval of Commission. In case of failure to agree within 10 days after presentation of claim, it may be presented to Commission. Upon application of either party, Commission must order a hearing and may appoint arbitration committee for that purpose. Decision of Commission is final as to facts (§20). *Goldstein v. Centre Iron Works,* 153 *N. Y. S.* 224; *Powley v. Vivian & Co.,* 154 *N. Y. S.* 426; *Carroll v. Knickerbocker Ice Co.,* 155 *N. Y. S.* 1; *Fairchild v. Penna. R. Co., id.* 751; *Cunningham v. Buffalo Rolling Mills, id.* 797; *Gardener v. Horseheads Constr. Co.,* 156 *N. Y. S.* 899.

RIGHT OF APPEAL

Within 30 days after Commission's decision, appeal may be taken to the Appellate Division, Third Department. Commission may also, upon application of either party, certify questions of law to Appellate Division. Further appeal lies to Court of Appeals as in other cases, except that where the decision of the Appellate Division is not unanimous, it is not necessary to obtain the consent of the Appellate Division or of a judge of the Court of Appeals, as a precedent condition (§23). *Kenny v. Union Ry. Co.,* 152 *N. Y. S.* 117; *Goldstein v. Centre Iron Works,* 153 *N. Y. S.* 224; *In re Rheinwald, id.* 598; *Hendricks v. Seeman Bros.,* 155 *N. Y. S.* 638; *Crockett v. State Ins. Fund, id.* 692; *Plass v. Central N. E. Ry. Co., id.* 854; *Gleisner v. Gross & Herbener, id.* 946; *Rhymer v. Hueber Bldg. Co.,* 156 *N. Y. S.* 903; *Collins v. Bklyn. Union Gas Co., id.* 957.

MODIFICATION OF AGREEMENTS AND AWARDS

Upon its own motion or upon application of any party in interest, at any time, the Commission may review and modify an award (§22). The Commission's jurisdiction is continuing, and, from time to time, it may modify any former orders or findings as it may deem just (§74).

COMMUTATIONS

The Commission may commute periodical payments to one or more lump sums whenever, in the interest of justice, it shall so deem advisable (§25). Whenever it is possible to compute the present value of future payments, Commission may permit or require payment of the amount thereof, together with a sum sufficient to cover expenses of administration, into a special trust fund, administered by the Commission, but kept separate from other moneys of the State Fund (§27).

PREFERENCE

A claim for compensation and any award thereunder has the same preference or lien without limit of amount as a claim for unpaid wages for labor (§34).

ASSIGNMENTS AND EXEMPTIONS

Claims for compensation may not be assigned, released or commuted, except as provided in Act. Compensation is exempt from all claims of creditors and from levy, execution, attachment, etc. (§33). *Bloom v. Jaffe,* 157 *N. Y. S.* 926.

HOW COMPENSATION IS SECURED

Insurance in State Fund or in some authorized company or mutual association is compulsory, with alternative to employer to carry his own risks upon proof of financial responsibility (§50). *Kenny v. Union Ry. Co.,* 152 *N. Y. S.* 117; *Winfield v. N. Y. C. & H. R. R. Co.,* 153 *N. Y. S.* 499, *affd.* 216 *N. Y.* 284; *McQueeney v. Sutphen & Hyer,* 153 *N. Y. S.* 554.

METHOD OF PAYMENT AND PROCEEDINGS TO COLLECT

Compensation is payable by employer periodically in same manner as wages. If employer defaults payment for 10 days, insurer becomes liable

therefor, and if payment be not made within 10 days after demand by employee or dependent, amount due is a liquidated claim for damages against employer or insurer, which, with added penalty of 50%, may be recovered in action by Commission. If payments not immediately due may be computed to present value, Commission may sue for full amount, with penalties. If employer defaults payment for 30 days, any party in interest may file with the county clerk a certified copy of the Commission's decision awarding compensation, whereupon judgment must be entered in the Supreme Court accordingly, which has the same effect as though rendered in an action duly tried (§§25, 26). *Woodcock v. Walker,* 155 *N. Y. S.* 702.

ATTORNEYS' LIENS AND FEES

Claims for legal services and for services of physicians or hospitals are not enforceable, unless approved by Commission. If so approved, they become liens upon award, but payable only in manner fixed by Commission (§24). *Bloom v. Jaffe,* 157 *N. Y. S.* 926.

MINORS AND INCOMPETENT PERSONS

No time limitation is to run against minor dependent or mentally incompetent person until appointment of guardian, committee or next friend (§116). *Herkey v. Agar Mfg. Co.,* 153 *N. Y. S.* 369; *Woodcock v. Walker,* 155 *N. Y. S.* 702. A minor employee is deemed *sui juris* for the purpose of making election under the Act (§2). The Commission may require the appointment of a guardian for the purpose of receiving death benefits payable to a minor dependent; but unless the Commission so requires, the appointment of a guardian is not necessary. (§16 [2]).

WHERE INJURY IS CAUSED BY THIRD PARTY

An employee injured by the negligence of a third party not in the same employ has the option either to take compensation or sue third party for damages. If first alternative be elected, he must assign his claim for damages to party liable for compensation. If second alternative be elected, the party liable for compensation need pay only the deficiency, if any, between amount recovered and total compensation (§29). *Lester v. Otis Elevator Co.,* 153 *N. Y. S.* 1058, 169 *A. D.* 613, 155 *N. Y. S.* 524; *Miller v. N. Y. Rys. Co.,* 157 *N. Y. S.* 200; *Woodward v. Conklin & Son, id.* 948; *Dale v. Saunders Bros., id.* 1062.

PRINCIPAL AND SUB-CONTRACTOR

No provision as to liability of employer to employees of contractors or sub-contractors; but see *In re Rheinwald,* 153 *N. Y. S.* 598; *Powley v. Vivian & Co.,* 154 *N. Y. S.* 426.

SUITS FOR DAMAGES

Employer's liability for compensation excludes any other liability whatsoever to the employee, his [or her] personal representatives, husband, parents, next of kin, etc.; except that if employer has not secured compensation as required by Art. 3, injured employee has option either to recover compensation or to sue for full damages, and in such suit for damages, employer's common law defenses are abrogated (§§11, 52). *Shinnick v. Clover Farms Co.,* 152 *N. Y. S.* 649; *Herkey v. Agar Mfg. Co.,* 153 *N. Y. S.* 369;

Dearborn v. Peugeot Auto Import Co., 155 *N. Y. S.* 769; *Dick v. Knoperbaum;* 157 *N. Y. S.* 754.

ACCIDENT PREVENTION

Employers may form association for accident prevention and adopt rules for that purpose, to become binding on all employers of the same class, subject to approval of Commission (§96).

REPORTS REQUIRED OF EMPLOYER OR INSURER

Joint report of agreement for payment of compensation must be made to Commission on form provided (§20). Report must be made to Commission of all accidents resulting in personal injury, within ten days after occurrence. Penalty for non-compliance, $500 fine (§111). Any information requested by Commission, must be given, and employer's books, records, etc., are subject to inspection (§§112-113).

POSTING NOTICES

Employers to whom the elective features of the Act are applicable are required to signify their election to come under the Act by posting notices thereof at their place of business (§2). Employer must post at his place or places of business, printed or typewritten notice, in form prescribed by Commission, of compliance with provision for securing compensation (§51).

CONTRACTING OUT

Agreements to waive the right to compensation are void (§32). Agreements for contribution by employees are void (§31). *Powley v. Vivian & Co.,* 154 *N. Y. S.* 426.

INSURANCE

General Provisions

If employer carries insurance, he must file with Commission notice thereof, in prescribed form, together with such information regarding his policy as the Commission may require (§50). Every policy of insurance must provide that Commission may enforce it, that notice to employer shall be deemed notice to insurer, etc., and that insolvency of employer shall not discharge insurer, etc.; and must cover liability for compensation. Policies may be cancelled only upon notice to Commission, etc. (§54). Policies may be issued to cover employers who perform labor incidental to their occupations (§54 [6]). All insurance carriers are subject to assessment to cover expenses of administering Act, beginning with the year 1917 (§77).

Stock Companies

Employer may insure compensation in any stock corporation authorized to transact such business within the State (§50).

Mutual Insurance

Thirteen or more persons may incorporate for purpose of insuring compensation on the mutual plan, but may not begin business until annual premiums on insurance applied for amount to $25,000 and membership is at least 40 employers with 2,500 employees, or 30 employers with 5,000 employees, or 20 employers with 7,500 employees, or 10 employers with

10,000 employees. Reserves must be maintained equal to that required of stock corporations in same class of insurance. Foreign mutual corporations may be admitted after Jan. 1, 1917. Such corporations are required to maintain a surplus of not less than $100,000 (Ch. 832, Laws 1913, as amended by Ch. 506, Laws 1915 and Ch. 393, Laws of 1916).

State Insurance

A State Insurance Fund, to be managed by the Commission, is created, subject to special provisions as to reports, reserves, assessments, etc. An employer insuring therein may withdraw, but remains liable for assessments for one year thereafter and is entitled to any dividend having accrued during his membership (Art. 5). Employers insuring therein are relieved from liability to employees (§53). *Crockett v. State Insurance Fund,* 155 *N. Y. S.* 692.

Regulation of Rates

Every corporation or association insuring compensation must file with Superintendent of Insurance its classification of risks and premiums, which are subject to his approval (Ch. 16, Laws of 1914). For State Insurance, risks are to be classified and premiums fixed by Commission (§§95, 97).

PENALTIES

Failure to report accidents is a misdemeanor, punishable by fine of $500 (§111). Penalty of 50% is added to claim for compensation in case of non-payment within 10 days after demand. Employer is liable to penalty of 10% of defaulted payment, regardless of subsequent payment by insurer (§26). Employer who deducts from wages any portion of insurance cost is guilty of a misdemeanor (§31). False statement in claim for compensation is a misdemeanor (§115). If employer insuring in State Fund wilfully misrepresents amount of pay roll, he is liable to State in 10 times the difference between premium paid and amount which should have been paid (§102). Failure to secure payment of compensation as required is a misdemeanor (§52).

EXTRA-TERRITORIAL EFFECT

No provision; but the courts have generally given extra-territorial effect to the Act, especially where the employee has been a resident of the State, or where the contract of employment was made in the State. *Edwardsen v. Jarvis Lighterage Co.,* 153 *N. Y. S.* 391; *Spratt v. Sweeney & Gray Co., id.* 505; *affd.* 216 *N. Y.* 763; *Valentine v. Smith,* 168 *A. D.* 403, *affd.* 216 *N. Y.* 763; *Post v. Burger,* 168 *A. D.* 403, *affd.* 216 *N. Y.* 544, 111 *N. E.* 351. But see, *contra, Gardener v. Horseheads Constr. Co.,* 156 *N. Y. S.* 899.

CONSTITUTIONALITY

If any provision of Act is held unconstitutional, it shall not affect validity of the remainder (§118). Amendment to State Constitution embodied in §19, Art. I, ratified by popular vote Nov. 4, 1913, provides there shall be no constitutional limit on power of Legislature to enact compensation or safety laws.

The Constitutionality of the Act was upheld by the New York Court of Appeals in *Jensen v. Southern Pacific Co.,* 215 *N. Y.* 514; *Walker v. Clyde S. S. Co., id.* 529.

MISCELLANEOUS PROVISIONS

Various presumptions established in favor of employee in claim for compensation (§21). *Winfield v. N. Y. C. & H. R. R. Co.,* 153 *N. Y. S.* 499; *McQueeney v. Sutphen & Hyer, id.* 554; *Kohler v. Frohmann, id.* 559; *In re Rheinwald, id.* 598; *Larsen v. Paine Drug Co.,* 155 *N. Y. S.* 759; *Collins v. Bklyn. Union Gas Co.,* 156 *N. Y. S.* 957.

Benefits accruing to employee from other sources are not to affect claim for compensation, except in case of gratuitous pension to public employee (§30).

If proceedings before Commission or Court are not brought on reasonable ground, the entire cost thereof is to be assessed on party bringing same (§24).

TEXT OF THE LAW

CHAPTER 816, LAWS OF 1913

As re-enacted by Chapter 41, Laws of 1914, and amended by Chapter 316, Laws of 1914, constituting Chapter 67 of the Consolidated Laws, further amended by Chapters 167, 168, 615 and 674, Laws of 1915; and by Chapter 622, Laws of 1916.

AN ACT

In relation to assuring compensation for injuries or death of certain employees in the course of their employment and repealing certain sections of the labor law relating thereto, constituting chapter sixty-seven of the consolidated laws.

The People of the State of New York; represented in Senate and Assembly, do enact as follows:

CHAPTER 67 OF THE CONSOLIDATED LAWS

Workmen's Compensation Law

Article 1. Short title, application, definitions. (Secs. 1-3).
2. Compensation. (Secs. 10-34).
3. Security for compensation. (Secs. 50-54).
4. State workmen's compensation commission. (Secs. 60-77).
5. State insurance fund. (Secs. 90-106).
6. Miscellaneous provisions. (Secs. 110-119).
7. Laws repealed; when to take effect. (Secs. 130-131).

ARTICLE 1

Short Title; Application; Definitions

Section 1. Short title.
2. Application.
3. Definitions.

Section 1. Short title. This chapter shall be known as the "workmen's compensation law."

Sec. 2. *[As amended by Chapter 622, Laws of 1916.] Application. Compensation provided for in this chapter shall be payable for injuries sustained or death incurred by employees engaged in the following hazardous employments:

Group 1. The operation, including construction and repair, of railways operated by steam, electric or other motive power, street railways, and incline railways, but not their construction when constructed by any person other than the company which owns or operates the railway, including work of express, sleeping, parlor and dining car employees on railway trains.

Group 2. Construction, *repair* and operation of railways not included in group one.

Group 3. The operation, including construction and repair, of car shops, machine shops, steam and power plants, and other works for the purposes of any such railway, or used or to be used in connection with it when operated, constructed or repaired by the company which owns or operates the railway.

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*The hazardous industries added to the various groups in this section by Chapter 622, Laws of 1916, are printed in italics.

Group 4. The operation, including construction and repair, of car shops, machine shops, steam and power plants, not included in group three.

Group 5. The operation, including construction and repair, of telephone lines and wires for the purposes of the business of a telephone company, or used or to be used in connection with its business, when constructed or operated by the company.

Group 6. The operation, including construction and repair, of telegraph lines and wires for the purposes of the business of a telegraph company, or used or to be used in connection with its business, when constructed or operated by the company.

Group 7. Construction *or repair* of telegraph and telephone lines not included in groups five and six.

Group 8. The operation, within or without the state, including repair, of vessels other than vessels of other states or countries used in interstate or foreign commerce, when operated or repaired by the company; *marine wrecking.*

Group 9. Shipbuilding, including construction and repair in a shipyard or elsewhere, not included in group eight.

Group 10. Longshore work, including the loading or unloading of cargoes or parts of cargoes of grain, coal, ore, freight, general merchandise, lumber or other products or materials, or moving or handling the same on any dock, platform or place, or in any warehouse or other place of storage.

Group 11. Dredging, subaqueous or caisson construction *or repair,* and pile driving.

Group 12. Construction, installation, *repair* or operation of electric light and electric power lines, dynamos, or appliances, and power transmission lines.

Group 13. Paving; *road-building, curb and sidewalk construction or repair;* sewer and subway construction *or repair,* work under compressed air, excavation, tunneling and shaft sinking, well digging, laying and repair of underground pipes, cables and wires, not included in other groups; *street cleaning, ashes, garbage or snow removal; operation of water works.*

Group 14. Lumbering; logging, river-driving, rafting, booming, saw mills, *bark mills;* shingle mills, lath mills, *lumber yards;* manufacture of veneer and of excelsior; manufacture of *barrels, kegs, vats, tubs,* staves, spokes, or headings.

Group 15. Pulp and paper mills.

Group 16. Manufacture of furniture, interior woodwork, organs, pianos, piano actions, canoes, small boats, coffins, wicker and rattan ware; upholstering; manufacture of mattresses or bed springs.

Group 17. Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes, mouldings, window and door screens, window shades, carpet sweepers, wooden toys, *wooden* articles and wares or baskets; *cork cutting.*

Group 18. Mining; reduction of ores and smelting; preparation of metals or minerals; *oil and gas wells.*

Group 19. Quarries; sand, shale, clay or gravel pits, lime kilns; manufacture of brick, tile, terra-cotta, *asbestos,* fireproofing, or paving blocks, manufacture of calcium carbide, cement, asphalt or paving material; *stone crushing or grinding.*

Group 20. Manufacture of glass, glass products, glassware, porcelain or pottery.

Group 21. Iron, steel or metal foundries; rolling mills; manufacture of castings, forgings, heavy engines, locomotives, machinery, safes, anchors,

cables, rails, shafting, wires, tubing, pipes, sheet metal, boilers, furnaces, stoves, structural steel, iron or metal; *machine shops, including repairs.*

Group 22. Operation and repair of stationary engines and boilers, *freight and passenger elevators,* not included in other groups; *window cleaning; heating and lighting.*

Group 23. Manufacture of small castings or forgings, metal wares, instruments, utensils and articles, hardware, nails, wire goods, *screws,* bolts, metal beds, sanitary, water, gas or electric fixtures, light machines, typewriters, cash registers, adding machines, carriage mountings, bicycles, metal toys, tools, cutlery, instruments, photographic cameras and supplies, sheet metal products, buttons; *jewelry; gold, silver and plated ware; articles of bone, ivory and shell.*

Group 24. Manufacture of agricultural implements, threshing machines, traction engines, wagons, carriages, sleighs, vehicles, automobiles, motor trucks, toy wagons, sleighs or baby carriages; *blacksmiths; horse-shoers.*

Group 25. Manufacture of explosives and dangerous chemicals, corrosive acids or salts, ammonia, gasoline, petroleum, petroleum products, celluloid, gas, charcoal, artificial ice, gun powder or ammunition; *ice harvesting, ice storage and ice distribution.*

Group 26. Manufacture of paint, color, varnish, oil, japans, turpentine, printing *and other* ink, printers' rollers, tar, tarred, pitched or asphalted paper.

Group 27. Distilleries, breweries; manufacture of spirituous or malt liquors, alcohol, wine, mineral water or soda waters; *bottling.*

Group 28. Manufacture of drugs and chemicals, not specified in group twenty-five, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candles, perfumes, non-corrosive acids or chemical preparations, fertilizers, including garbage *or sewerage* disposal plants; shoe blacking or polish.

Group 29. Milling; manufacture of cereals or cattle foods, warehousing; storage *of all kinds and storage for hire;* operation of grain elevators.

Group 30. Packing houses, *meat markets,* abattoirs, manufacture or preparation of meats or meat products or glue, *gelatine, paste or wax.*

Group 31. Tanneries.

Group 32. *Furriers;* manufacture of leather goods and products, belting, saddlery, harness, trunks, valises, boots, shoes, gloves, umbrellas, rubber goods, rubber shoes, tubing, tires or hose.

Group 33. Canning or preparation of fruit, vegetables, fish or food stuffs; pickle factories and sugar refineries; *manufacture of dairy products.*

Group 34. Bakeries, including manufacture of crackers and biscuits, manufacture of confectionery, spices or condiments.

Group 35. Manufacture of tobacco, cigars, cigarettes or tobacco products.

Group 36. Manufacture of cordage, ropes, fibre, brooms or brushes; manilla or hemp products.

Group 37. Flax mills; manufacture of textiles or fabrics, spinning, weaving and knitting manufactories; manufacture of yarn, thread, hosiery, cloth, blankets, carpets, canvas, bags, shoddy or felt.

Group 38. Manufacture of men's or women's clothing, white wear, shirts, collars, corsets, hats, caps, furs or robes, *or other articles from textiles or fabrics.*

Group 39. Power laundries; dyeing, cleaning or bleaching.

Group 40. Printing, *engraving,* photo-engraving, stereotyping, electrotyping, lithographing, embossing; *manufacture of moving picture machines and films;* manufacture of stationery, paper, cardboard boxes, bags, or wall-paper; and book-binding.

Group 41. The operation, otherwise than on tracks, on streets, highways, or elsewhere of cars, trucks, wagons or other vehicles, and rollers and engines, propelled by steam, gas, gasoline, electric, mechanical or other power or drawn by horses or mules, *public garages, livery, boarding or sales stables; movers of all kinds.*

Group 42. Stone cutting or dressing; marble works; manufacture of artificial stone; steel building and bridge construction *or repair;* installation *or repair* of elevators, fire escapes, boilers, engines or heavy machinery; bricklaying, tile-laying, mason work, stone-setting, concrete work, plastering; and manufacture of concrete blocks; structural carpentry; painting, *papering, picture hanging, glazing,* decorating or renovating; sheet metal work; roofing; construction, repair and demolition of buildings, bridges *and other structures; salvage of buildings or contents;* plumbing, sanitary *lighting* or heating *installation or repair;* installation and covering of pipes or boilers; *junk dealers.*

Group 43. *Any employment enumerated in the foregoing groups and carried on by the state or a municipal corporation or other subdivision thereof, notwithstanding the definition of the term "employment" in subdivision five of section three of this chapter.

*Any employer not carrying on one of the employments enumerated in this section, or who carrying on one of such employments has in his employ an employee not included within the term "employee" as defined by section three of this chapter, and the employees of any such employer may, by their joint election, elect to become subject to the provisions of this chapter in the manner hereinafter provided. Such election on the part of the employer shall be made by posting notices thereof about the place where the workmen are employed, in a manner to be prescribed by rules to be adopted by the commission, and by filing with the commission a written statement, in a form to be prescribed by the commission, to the effect that he accepts the provisions of this chapter and that he adopts subject to the approval of the commission one of the methods of securing compensation to his employees prescribed in section fifty of this chapter which, when so filed with and approved by the commission as to form and method of securing compensation shall operate to subject him to the provisions of this chapter and of all acts amendatory thereof for the period of one year from the date of such approval, and thereafter without further act on his part for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file with the commission a notice in writing that he withdraws his election.

*Any employee in the service of any such employer shall be deemed to have accepted, and shall be subject to the provisions of this chapter and any act amendatory thereof, if, at the time of the accident for which liability is claimed, the employer charged with such liability has not withdrawn his election and the employee shall not at the time of entering into his contract of hire have given to his employer notice in writing that he elects not to be subject to the provisions of this chapter and filed a copy thereof with the commission, or in the event that such contract for hire was made in advance of the election of the employer, such employee shall not have given to his employer and filed with the commission within twenty days after such election notice in writing that he elects not to be subject to such provisions.

*A minor employee shall be deemed sui juris for the purpose of making such an election.

*The rights and remedies, benefits and liabilities of an employer or em-

*This paragraph added to the law by Chapter 622, Laws of 1916.

ployee so electing to become subject to the provisions of this chapter shall thereupon become the same as they would have been had they been engaged in one of the occupations or employments enumerated herein and the words employer or employee wherever they appear in this chapter shall be construed as including an employer or employee who has so elected to become subject to its provisions.

Sec. 3. [As amended by Chapter 622, Laws of 1916.] Definitions. As used in this chapter, 1. "Hazardous employment" means a work or occupation described in section two of this chapter.

2. "Commission" means the state industrial commission, as constituted by this chapter.

3. "Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation, employing workmen in hazardous employments including the state and a municipal corporation or other political subdivision thereof.

4. "Employee' means a person engaged in one of the operations enumerated in section two or who is in the service of an employer whose principal business is that of carrying on or conducting a hazardous employment upon the premises or at the plant, or in the course of his employment away from the plant of his employer; and shall not include farm laborers or domestic servants.

5. "Employment" includes employment only in a trade, business or occupation carried on by the employer for pecuniary gain, except where the employer and his employees have by their joint election elected to become subject to the provisions of this chapter as provided in section two.

6. "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this chapter, and includes funeral benefits provided therein.

7. "Injury" and "personal injury" mean only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally and unavoidably result therefrom.

8. "Death" when mentioned as a basis for the right to compensation means only death resulting from such injury.

9. "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including the reasonable value of board, rent, housing, lodging or similar advantage received from the employer.

10. "State fund" means the state insurance fund provided for in article five of this chapter.

11. "Child" shall include a posthumous child and a child legally adopted prior to the injury of the employee; and a step-child dependent upon the deceased.

12. "Insurance carrier" shall include the state fund, stock corporations or mutual associations with which employers have insured, and employers permitted to pay compensation directly under the provisions of subdivision three of section fifty.

13. "Manufacture," "construction," "operation" and "installation" shall include "repair," "demolition" and "alteration."

ARTICLE 2

Compensation

Section 10. Liability for compensation.
11. Alternative remedy.
12. Compensation not allowed for first two weeks.
13. Treatment and care of injured employees.
14. Weekly wages basis of compensation.
15. Schedule in case of disability.
16. Death benefits.
17. Aliens.
18. Notice of injury.
19. Medical examination.
20. Determination of claims for compensation.
21. Presumptions.
22. Modification of award.
23. Appeals from the commission.
24. Costs and fees.
25. Compensation, how payable.
26. Enforcement of payment in default.
27. Depositing future payments.
28. Limitation of right to compensation.
29. Subrogation to remedies of employee.
30. Revenues or benefits from other sources not to affect compensation.
31. Agreement for contribution by employee void.
32. Waiver agreements void.
33. Assignments; exemptions.
34. Preferences.

Sec. 10. Liability for compensation. Every employer subject to the provisions of this chapter shall pay or provide as required by this chapter compensation according to the schedules of this article for the disability or death of his employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of his employment, without regard to fault as a cause of such injury, except where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty. Where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty, neither the injured employee nor any dependent of such employee shall receive compensation under this chapter.

Sec. 11. [As amended by Chapter 622, Laws of 1916.] Alternative remedy. The liability of an employer prescribed by the last preceding section shall be exclusive and in place of any other liability whatsoever, to such employee, his personal representatives, husband, parents, dependents or next of kin, or anyone otherwise entitled to recover damages, at common law or otherwise on account of such injury or death, except that if an employer fail to secure the payment of compensation for his injured employees and their dependents as provided in section fifty of this chapter, an injured employee, or his legal representative in case death results from the injury, may, at his option, elect to claim compensation under this chapter, or to maintain an action in the courts for damages on account of such injury; and in such an action it shall not be necessary to plead or prove freedom from contributory

negligence nor may the defendant plead as a defense that the injury was caused by the negligence of a fellow servant nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

Sec. 12. Compensation not allowed for first two weeks. No compensation shall be allowed for the first fourteen days of disability, except the benefits provided for in section thirteen of this chapter.

Sec. 13. Treatment and care of injured employees. The employer shall promptly provide for an injured employee such medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus as may be required or be requested by the employee, during sixty days after the injury. If the employer fail to provide the same, the injured employee may do so at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so. All fees and other charges for such treatment and services shall be subject to regulation by the commission as provided in section twenty-four of this chapter, and shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living.

Sec. 14. Weekly wages basis of compensation. Except as otherwise provided in this chapter, the average weekly wages of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation or death benefits, and shall be determined as follows:

1. If the injured employee shall have worked in the employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he shall have earned in such employment during the days when so employed;

2. If the injured employee shall not have worked in such employment during substantially the whole of such year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or in a similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed;

3. If either of the foregoing methods of arriving at the annual average earnings of an injured employee cannot reasonably and fairly be applied, such annual earnings shall be such sum as, having regard to the previous earnings of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or neighboring locality, shall reasonably represent the annual earning capacity of the injured employee in the employment in which he was working at the time of the accident;

4. The average weekly wages of an employee shall be one-fifty-second part of his average annual earnings;

5. If it be established that the injured employee was a minor when injured, and that under normal conditions his wages would be expected to increase, the fact may be considered in arriving at his average weekly wages.

Sec. 15. [As amended by Chapter 622, Laws of 1916.] Schedule in case of disability. The following schedule of compensation is hereby established.

1. Total permanent disability. In case of total disability adjudged to

be permanent sixty-six and two-thirds per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

2. Temporary total disability. In case of temporary total disability, sixty-six and two-thirds per centum of the average weekly wages shall be paid to the employee during the continuance thereof, but not in excess of three thousand five hundred dollars, except as otherwise provided in this chapter.

3. Permanent partial disability. In case of disability partial in character but permanent in quality the compensation shall be sixty-six and two-thirds per centum of the average weekly wages and shall be paid to the employee for the period named in the schedule as follows:

Thumb. For the loss of a thumb, sixty weeks.

First finger. For the loss of a first finger, commonly called index finger, forty-six weeks.

Second finger. For the loss of a second finger, thirty weeks.

Third finger. For the loss of a third finger, twenty-five weeks.

Four finger. For the loss of a fourth finger, commonly called the little finger, fifteen weeks.

Phalange of thumb or finger. The loss of the first phalange of the thumb or finger shall be considered to be equal to the loss of one-half of such thumb or finger, and compensation shall be one-half of the amount above specified. The loss of more than one phalange shall be considered as the loss of the entire thumb or finger; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

Great toe. For the loss of a great toe, thirty-eight weeks.

Other toes. For the loss of one of the toes other than the great toe, sixteen weeks.

Phalange of toe. The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of said toe, and the compensation shall be one-half of the amount specified. The loss of more than one phalange shall be considered as the loss of the entire toe.

Hand. The loss of a hand, two hundred and forty-four weeks.

Arm. For the loss of an arm, three hundred and twelve weeks.

Foot. For the loss of a foot, two hundred and five weeks.

Leg. For the loss of a leg, two hundred and eighty-eight weeks.

Eye. For the loss of an eye, one hundred and twenty-eight weeks.

Loss of use. Permanent loss of the use of a hand, arm, foot, leg, eye, thumb, finger, toe, or phalange, shall be considered as the equivalent of the loss of such hand, arm, foot, leg, eye, thumb, finger, toe or phalange.

Amputations. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand. Amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm. Amputation at or above the knee shall be considered as the loss of the leg.

The compensation for the foregoing specific injuries shall be in lieu of all other compensation, except the benefits provided in section thirteen of this chapter.

In case of an injury resulting in serious facial or head disfigurement

the commission may in its discretion, make such award or compensation as it may deem proper and equitable, in view of the nature of the disfigurement, but not to exceed three thousand five hundred dollars.

Other cases. In all other cases in this class of disability, the compensation shall be sixty-six and two-thirds per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the commission on its own motion or upon application of any party in interest.

4. Temporary partial disability. In case of temporary partial disability, except the particular cases mentioned in subdivision three of this section, an injured employee shall receive sixty-six and two-thirds per centum of the difference between his average weekly wages and his wage earning capacity thereafter in the same employment or otherwise during the continuance of such partial disability, but not to exceed when combined with his decreased earnings the amount of wages he was receiving prior to the injury, and not to exceed in total the sum of three thousand five hundred dollars, except as otherwise provided in this chapter.

5. Limitation. The compensation payment under subdivisions one, two and four and under subdivision three except in case of the loss of a hand, arm, foot, leg, or eye, shall not exceed fifteen dollars per week nor be less than five dollars per week; the compensation payment under subdivision three in case of the loss of a hand, arm, foot, leg or eye, shall not exceed twenty dollars per week nor be less than five dollars a week; provided, however, that if the employee's wages at the time of injury are less than five dollars per week he shall receive his full weekly wages.

6. [As amended by Chapter 615, Laws of 1915.] Previous disability. The fact that an employee has suffered previous disability or received compensation therefor shall not preclude him from compensation for a later injury nor preclude compensation for death resulting therefrom; but in determining compensation for the later injury or death his average weekly wages shall be such sum as will reasonably represent his earning capacity at the time of the later injury, provided, however, that an employee who is suffering from a previous disability shall not receive compensation for a later injury in excess of the compensation allowed for such injury when considered by itself and not in conjunction with the previous disability.

7. Permanent total disability after permanent partial disability. If an employee who has previously incurred permanent partial disability through the loss of one hand, one arm, one foot, one leg, or one eye, incurs permanent total disability through the loss of another member or organ, he shall be paid, in addition to the compensation for permanent partial disability provided in this section and after the cessation of the payments for the prescribed period of weeks special additional compensation for the remainder of his life to the amount of sixty-six and two-thirds per centum of the average weekly wage earned by him at the time the total permanent disability was incurred. Such additional compensation shall be paid out of a special fund created for such purpose in the following manner: The insurance carrier shall pay to the state treasurer for every case of injury causing death in which there are no persons entitled to compensation the sum of one hundred dollars. The state treasurer shall be the custodian of this special fund and the commission shall direct the distribution thereof.

Sec. 16. [As amended by Chapter 622, Laws of 1916.] Death benefits.

If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

1. Reasonable funeral expenses, not exceeding one hundred dollars;

2. If there be a surviving wife (or dependent husband) and no child of the deceased under the age of eighteen years, to such wife (or dependent husband) thirty per centum of the average wages of the deceased during widowhood (or dependent widowerhood) with two years' compensation in one sum, upon remarriage; and if there be surviving child or children of the deceased under the age of eighteen years, the additional amount of ten per centum of such wages for each such child until of the age of eighteen years; in case of the subsequent death of such surviving wife (or dependent husband) any surviving child of the deceased employee, at the time under eighteen years of age, shall have his compensation increased to fifteen per centum of such wages, and the same shall be payable until he shall reach the age of eighteen years; provided that the total amount payable shall in no case exceed sixty-six and two-thirds per centum of such wages. The commission may in its discretion require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement by the commission the appointment of a guardian for such purposes shall not be necessary.

3. If there be surviving child or children of the deceased under the age of eighteen years, but no surviving wife (or dependent husband) then for the support of each such child until of the age of eighteen years, fifteen per centum of the wages of the deceased, provided that the aggregate shall in no case exceed sixty-six and two-thirds per centum of such wages.

4. If there be no surviving wife (or dependent husband) or child under the age of eighteen years or if the amount payable to surviving wife (or dependent husband) and to children under the age of eighteen years shall be less in the aggregate than sixty-six and two-thirds per centum of the average wages of the deceased, then for the support of grandchildren or brothers and sisters under the age of eighteen years, if dependent upon the deceased at the time of the accident, fifteen per centum of such wages for the support of each such person until of the age of eighteen years; and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the accident, twenty-five per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between sixty-six and two-thirds per centum of such wages, and the amount payable as hereinbefore provided to surviving wife (or dependent husband) or for the support of surviving child or children.

Any excess of wages over one hundred dollars a month shall not be taken into account in computing compensation under this section. All questions of dependency shall be determined as of the time of the accident.

Sec. 17. [As amended by Chapter 622, Laws of 1916.] Aliens. Compensation under this chapter to aliens not residents (or about to become non-residents) of the United States or Canada, shall be the same in amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or, if there be no surviving wife or child or children, to surviving father or mother, or grandfather or grandmother, whom the employee has supported, either wholly or in part, for the period of one year prior to the date of the accident, and except that the commission may, at its option, or, upon the application of the insurance

carrier, shall, commute all future installments of compenstaion to be paid to such aliens, by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the commission.

Sec. 18. Notice of injury. Notice of an injury for which compensation is payable under this chapter shall be given to the commission and to the employer within ten days after disability, and also in case of the death of the employee resulting from such injury, within thirty days after such death. Such notice may be given by any person claiming to be entitled to compensation, or by some one in his behalf. The notice shall be in writing, and contain the name and address of the employee, and state in ordinary language the time, place, nature and cause of the injury, and be signed by him or by a person on his behalf or, in case of death, by any one or more of his dependents, or by a person on their behalf. It shall be given to the commission by sending it by mail, by registered letter, addressed to the commission at its office. It shall be given to the employer by delivering it to him or sending it by mail, by registered letter, addressed to the employer at his or its last known place of residence; provided that, if the employer be a partnership then such notice may be so given to any one of the partners, and if the employer be a corporation, then such notice may be given to any agent or officer thereof upon whom legal process may be served, or any agent in charge of the business in the place where the injury occurred. The failure to give such notice, unless excused by the commission either on the ground that notice for some sufficient reason could not have been given, or on the ground that the state fund, insurance company, or employer, as the case may be, has not been prejudiced thereby, shall be a bar to any claim under this chapter.

Sec. 19. Medical examination. An employee injured claiming or entitled to compensation under this chapter shall, if requested by the commission, submit himself for medical examination at a time, and from time to time, at a place reasonably convenient for the employee, and as may be provided by the rules of the commission. If the employee or the insurance carrier request he shall be entitled to have a physician or physicians of his own selection to be paid by him present to participate in such examination. If an employee refuse to submit himself to examination, his right to prosecute any proceeding under this chapter shall be suspended, and no compensation shall be payable, for the period of such refusal.

Sec. 20. [As amended by Chapter 167, Laws of 1915.] Determination of claims for compensation. At any time after the expiration of the first fourteen days of disability on the part of an injured employee, or at any time after his death, a claim for compensation may be presented to the employer and if rejected or if within 10 days after presentation, a report containing an agreement for compensation be not made and filed with the commission as provided by this section, the claim may be presented to the commission. The commission shall have full power and authority to determine all questions in relation to the payment of claims presented to it for compensation under the provisions of this chapter. The commission shall make or cause to be made such investigations as it deems necessary, and upon application of either party, shall order a hearing, and within thirty days after a claim for compensation is submitted under this section, or such hearing closed, shall make or deny an award, determining such claim for compensation, and file the same in the office of the commission, together with a statement of its conclusions of fact and rulings of law. The commission

may before making an award, require the claimant to appear before an arbitration committee appointed by it and consisting of one representative of employees, one representative of employers, and either a member of the commission or a person specially deputized by the commission to act as chairman, before which the evidence in regard to the claim shall be adduced and by which it shall be considered and reported upon. Immediately after such filing the commision shall send to the parties a copy of the decision. Upon a hearing pursuant to this section either party may present evidence and be represented by counsel. The decision of the commission shall be final as to all questions of fact, and, except as provided in section twenty-three, as to all questions of law. When a claim is presented to an employer, and the employer and employee, or in case of death, his principal dependent, enter into an agreement for the payment of compensation therefor pursuant to this chapter, a joint report of such claim containing such agreement shall be made to the commission upon a form prepared by it and signed by the employer and employee, or in case of death his principal dependent. The commission shall examine such report and approve the same when the terms are strictly in accordance with this chapter and such approval shall constitute an award. However, the commission may make an award in the manner provided in this section in any case, and if the terms of the award vary from the joint report, the employer shall comply with the award. In case of unfair dealing or of bad faith on the part of the employer under this section, the commission may impose a penalty of not more than ten per centum of the award.

[A claim for compensation presented to the commission prior to the date when this act takes effect* shall be determined by the commission, although such claim shall not have been theretofore presented to the employer as provided by section twenty, as amended by this act.—Chapter 167, Laws of 1915. (Sec. 2.)]

Sec. 20-a. [Added by Chapter 168, Laws of 1915.] Payment of moneys in advance of award by commission. Any employer shall upon making of the agreement provided for in section twenty advance to any injured employee or to the principal dependent of a deceased employee, the payment or payments provided for in the agreement, in return for which he shall receive a receipt on a form supplied by the commission and signed by the person receiving the money, which receipt shall specifically state in what capacity the signer acted while so receiving such money; such receipt shall be forwarded to the commission within forty-eight hours after date of its issuance and the sum stated on its face shall be returned to said employer as provided in section twenty-five.

Prior to the making of said agreement or in the event of no agreement, any employer may at his option advance to any injured employee or to the principal dependent of a deceased employee any sum of money, in return for which he shall receive a receipt on a form supplied by the commission and signed by the person receiving the money, which receipt shall specifically state on what capacity the signer acted while so receiving such money; such receipt shall be forwarded to the commission within forty-eight hours after date of its issuance. Should any agreement or award be made the sum so stated on the face of the receipt shall be credited to the payment under the award or agreement and shall be repaid as hereinbefore provided. Any money so advanced shall be at the employer's risk.

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*April 1, 1915.

Sec. 21. Presumptions. In any proceeding for the enforcement of a claim for compensation under this chapter, it shall be presumed in the absence of substantial evidence to the contrary.

1. That the claim comes within the provisions of this chapter;

2. That sufficient notice thereof was given;

3. That the injury was not occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another;

4. That the injury did not result solely from the intoxication of the injured employee while on duty.

Sec. 22. Modification of award. Upon its own motion or upon the application of any party in interest, on the ground of a change in conditions, the commission may at any time review any award, and, on such review, may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this chapter, and shall state its conclusions of fact and rulings of law, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any moneys already paid.

Sec. 23. [As amended by Chapter 622, Laws of 1916.] Appeals from the commission. An award or decision of the commission shall be final and conclusive upon all questions within its jurisdiction, as against the state fund or between the parties, unless within thirty days after a copy of such award or decision has been sent to the parties, an appeal be taken to the appellate division of the supreme court of the third department. The commission may also, in its discretion, on the application of either party, certify to such appellate division of the supreme court, questions of law involved in its decision. Such appeals and the questions so certified shall be heard in a summary manner and shall have precedence over all other civil cases in such court. The commission shall be deemed a party to every such appeal, and the attorney-general, without extra compensation, shall represent the commission thereon. An appeal may also be taken to the court of appeals in all cases where the decision of the appellate division is not unanimous and by the consent of the appellate division or a judge of the court of appeals where the decision of the appellate division is unanimous in the same manner and subject to the same limitations not inconsistent herewith as is now provided in civil actions. It shall not be necessary to file exceptions to the rulings of the commission. The commission shall not be required to file a bond upon an appeal by it to the court of appeals. Otherwise such appeals shall be subject to the law and practice applicable to appeals in civil actions. Upon the final determination of such an appeal, the commission shall make an award or decision in accordance therewith.

Sec. 24. Costs and fees. If the commission or the court before which any proceedings for compensation or concerning an award of compensation have been brought, under this chapter, determines that such proceedings have not been so brought upon reasonable ground, it shall assess the whole cost of the proceeding upon the party who has so brought them. Claims for legal services in connection with any claim arising under this chapter, and claims for services or treatment rendered or supplies furnished pursuant to section thirteen of this chapter, shall not be enforceable unless approved by the commission. If so approved, such claim or claims shall become a lien upon the compensation awarded, but shall be paid therefrom only in the manner fixed by the commission.

Sec. 25. [As amended by Chapter 167, Laws of 1915.] Compensation, how payable. Compensation under the provisions of this chapter shall be

payable periodically by the employer, in accordance with the method of payment of the wages of the employee at the time of his injury or death, and shall be so provided for in any award; but the commission may determine that any payments may be made monthly or at any other period, as it may deem advisable. The state fund or insurance corporation in which an employer is insured shall, within ten days after demand by such employer and on the presentation of evidence of payment of compensation in accordance with this chapter, reimburse the employer therefor. An injured employee, or in case of death his dependents or personal representative, shall give receipts for payment of compensation to the employer paying the same and such employer shall forward receipts therefor promptly to the commission. The commission, whenever it shall so deem advisable, may commute such periodical payments to one or more lump sum payments to the injured employee or, in case of death, his dependents, provided the same shall be in the interest of justice.

Sec. 26. [As amended by Chapter 167, Laws of 1915 and by Chapter 622, Laws of 1916.] Enforcement of payment in default. If payment of compensation, or an installment thereof, due under the terms of an award, be not made by the employer within ten days after the same is due, the insurance carrier shall be liable therefor and if not paid within ten days after demand by the injured employee or in case of death his dependents or by the commission, the amount of such payment shall constitute a liquidated claim for damages against the employer, the self-insurer or insurance corporation, which with an added penalty of fifty per centum may be recovered in an action to be instituted by the commission in the name of the people of the state. An employer who negligently or intentionally defaults in payment of compensation in the first instance under this chapter shall be liable to a penalty of not more than ten per centum of the amount of such compensation, notwithstanding the fact that the insurance corporation or state fund subsequently pays the compensation as provided in this section. If such default be made in the payment of an installment of compensation and the whole amount of such compensation be not due, the commission may, if the present value of such compensation be computable, declare the whole amount thereof due, and recover the amount thereof with the added penalties, as provided by this section. Any such action may be compromised by the commission or may be prosecuted to final judgment as, in the discretion of the commission, may best serve the interests of the persons entitled to receive the compensation or the benefits. Compensation recovered under this section shall be disbursed by the commission to the persons entitled thereto in accordance with the award. A penalty recovered pursuant to this section shall be paid into the state treasury, and be applicable to the expenses of the commission.

In case of default by the employer in the payment of any compensation due under an award for the period of thirty days after payment is due and payable, any party in interest may file with the county clerk for the county in which the injury occurred, a certified copy of a decision of the state industrial commission awarding compensation, or ending, diminishing or increasing compensation previously awarded, from which no appeal has been taken within the time allowed therefor, and thereupon judgment must be entered in the supreme court by the clerk of such county in conformity therewith immediately upon the filing of such decision. Such decree or judgment shall be entered in the same manner and shall have the same effect and all proceedings in relation thereto shall thereafter be

the same, as though said decree or judgment had been rendered in a suit duly heard and determined by the supreme court, except that there shall be no appeal therefrom. The court upon the filing with it of a certified copy of a decision of the state industrial commission ending, diminishing or increasing compensation previously awarded, shall revoke or modify its prior decree or judgment so that it will conform to said decision. Neither the commission nor any party in interest shall be required to pay any fee to any public officer for filing or recording any paper or instrument executed in pursuance of this section.

Sec. 27. [As amended by Chapter 622, Laws of 1916.] Depositing future payments. If an award under this chapter requires payment of compensation by an employer or an insurance corporation in periodical payments, and the nature of the injury makes it possible to compute the present value of all future payments with due regard for life contingencies, the commission may, in its discretion, at any time, compute and permit or require to be paid into the state fund an amount equal to the present value of all unpaid compensation for which liability exists, together with such additional sum as the commission may deem necessary for a proportionate payment of expenses of administering the fund so created, such moneys to constitute an aggregate trust fund; and thereupon such employer or insurance corporation shall be discharged from any further liability under such award and payment of the same shall be assumed by the trust fund so created.

The moneys so paid into this fund shall constitute an aggregate trust fund and shall be kept separate and apart from all other moneys of the state fund, and shall not be liable for any expenses of administration of the state fund other than the expenses involved in the administration of such trust fund.

Sec. 28. Limitation of right to compensation. The right to claim compensation under this chapter shall be forever barred unless within one year after the injury, or if death result therefrom, within one year after such death, a claim for compensation thereunder shall be filed with the commission.

Sec. 29. [As amended by Chapter 622, Laws of 1916.] Subrogation to remedies of employees. If an employee entitled to compensation under this chapter be injured or killed by the negligence or wrong of another not in the same employ, such injured employee, or in case of death, his dependents, shall, before any suit or claim under this chapter, elect whether to take compensation under this chapter or to pursue his remedy against such other. Such election shall be evidenced in such manner as the commission may by rule or regulation prescribe. If he elect to take compensation under this chapter, the cause of action against such other shall be assigned to the state for the benefit of the state insurance fund, if compensation be payable therefrom, and otherwise to the person, association, corporation, or insurance carrier liable for the payment of such compensation, and if he elect to proceed against such other, the state insurance fund, person, association, corporation, or insurance carrier, as the case may be, shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected, and the compensation provided or estimated by this chapter for such case. Such a cause of action assigned to the state may be prosecuted or compromised by the commission. A compromise of any such cause of action by the employee or his dependents at an amount less than the compensation provided for by this chapter shall be made only with the written approval of the commission, if the deficiency of compensation would be payable from the state insurance fund, and otherwise with the written approval of the person, association, corporation, or

insurance carrier liable to pay the same. Wherever an employee is killed by the negligence or wrong of another not in the same employ and the dependents of such employee entitled to compensation under this chapter are minors, such election to take compensation and the assignment of the cause of action against such other and such notice of election to pursue a remedy against such other shall be made by such minor, or shall be made on behalf of such minor by a parent of such minor, or by his or her duly appointed guardian, as the commission may determine by rule in each case.

Sec. 30. Revenues or benefits from other sources not to affect compensation. No benefits, savings or insurance of the injured employee, independent of the provisions of this chapter, shall be considered in determining the compensation or benefits to be paid under this chapter except that, in case of the death of an employee of the state, a municipal corporation or any other political subdivision of the state, any benefit payable under a pension system which is not sustained in whole or in part by the contributions of the employee, may be applied toward the payment of the death benefit provided by this chapter.

Sec. 31. Agreement for contribution by employee void. No agreement by an employee to pay any portion of the premium paid by his employer to the state insurance fund or to contribute to a benefit fund or department maintained by such employer or to the cost of mutual insurance or other insurance, maintained for or carried for the purpose of providing compensation as herein required, shall be valid, and any employer who makes a deduction for such purpose from the wages or salary of any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor.

Sec. 32. Waiver agreements void. No agreement by an employee to waive his right to compensation under this chapter shall be valid.

Sec. 33. Assignments; exemptions. Claims for compensation or benefits due under this chapter shall not be assigned, released or commuted except as provided by this chapter, and shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived. Compensation and benefits shall be paid only to employees or their dependents.

Sec. 34. [As amended by Chapter 622, Laws of 1916.] Preferences. The right of compensation granted by this chapter and any awards made thereunder shall have the same preference or lien without limit of amount against the assets of the employer as is now or hereafter may be allowed by law for a claim for unpaid wages for labor.

ARTICLE 3.

Security for Compensation

Sec. 50. Security for payment of compensation.
51. Posting of notice regarding compensation.
52. Effect of failure to secure compensation.
53. Release from all liability.
54. The insurance contract.

Sec. 50. [As amended by Chapter 622, Laws of 1916.] Security for payment of compensation. An employer shall secure compensation to his employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation in the state fund, or

2. By insuring and keeping insured the payment of such compensation with any stock corporation or mutual association authorized to transact the

business of workmen's compensation insurance in this state. If insurance be so effected in such a corporation or mutual association the employer shall forthwith file with the commission, in form prescribed by it, a notice specifying the name of such insurance corporation or mutual association and such information regarding the policies as the commission may require.

3. By furnishing satisfactory proof to the commission of his financial ability to pay such compensation for himself, in which case the commission may, in its discretion, require the deposit with the commission of securities of the kind prescribed in section thirteen of the insurance law, in an amount to be determined by the commission, to secure his liability to pay the compensation provided in this chapter. The commission shall have the authority to revoke its consent furnished under this section at any time for good cause shown.

If an employer fail to comply with this section, he shall be liable to a penalty during which such failure continues of an amount equal to the pro rata premium which would have been payable for insurance in the state fund for such period of non-compliance to be recovered in an action brought by the commission.

The commission may, in its discretion, for good cause shown, remit any such penalty, provided the employer in default secure compensation as provided in this section.

Sec. 51. Posting of notice regarding compensation. Every employer who has complied with section fifty of this chapter shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed notices in form prescribed by the commission, stating the fact that he has complied with all the rules and regulations of the commission and that he has secured the payment of compensation to his employees and their dependents in accordance with the provisions of this chapter.

Sec. 52. [As amended by Chapter 622, Laws of 1916.] Effect of failure to secure compensation. Failure to secure the payment of compensation shall constitute a misdemeanor and have the effect of enabling the injured employee or in case of death, his dependents or legal representatives, to maintain an action for damages in the courts, as prescribed by section eleven of this chapter.

Sec. 53. Release from all liability. An employer securing the payment of compensation by contributing premiums to the state fund shall thereby become relieved from all liability for personal injuries or death sustained by his employees, and the persons entitled to compensation under this chapter shall have recourse therefor only to the state fund and not to the employer. An employer shall not otherwise be relieved from the liability for compensation prescribed by this chapter except by the payment thereof by himself or his insurance carrier.

Sec. 54. [As amended by Chapter 622, Laws of 1916.] The insurance contract. 1. Right of recourse to the insurance carrier. Every policy of insurance covering the liability of the employer for compensation issued by a stock company or by a mutual association authorized to transact workmen's compensation insurance in this state shall contain a provision setting forth the right of the commission to enforce in the name of the people of the state of New York for the benefit of the person entitled to the compensation insured by the policy either by filing a separate application or by making the insurance carrier a party to the original application, the liability of the insurance carrier in whole or in part for the payment of

such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance carrier shall to the extent thereof be a bar to the recovery against the other of the amount so paid.

2. Knowledge and jurisdiction of the employer extended to cover the insurance carrier. Every such policy shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this chapter, be jurisdiction of the insurance carrier and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation under the provisions of this chapter.

3. Insolvency of employer does not release the insurance carrier. Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of compensation for injuries or death sustained by an employee during the life of such policy.

4. Limitation of indemnity agreements. Every contract or agreement of an employer the purpose of which is to indemnify him from loss or damage on account of the injury of an employee by accidental means, or on account of the negligence of such employer or his officer, agent or servant, shall be absolutely void unless it shall also cover liability for the payment of the compensation provided for by this chapter.

5. Cancellation of insurance contracts. No contract of insurance issued by an insurance carrier against liability arising under this chapter shall be cancelled within the time limited in such contract for its expiration until at least ten days after a notice of cancellation of such contract, on a date specified in such notice, shall be filed in the office of the commission and also served on the employer. Such notice shall be served on the employer by delivering it to him or by sending it by mail, by registered letter, addressed to the employer at his or its last known place of residence; provided that, if the employer be a partnership, then such notice may be so given to any one of the partners, and if the employer be a corporation, then the notice may be given to any agent or officer of the corporation upon whom legal process may be served. Provided, however, the right to cancellation of a policy of insurance in the state fund shall be exercised only for non-payment of premiums.

6. Any insurance carrier may issue policies, including with employees, employers who perform labor incidental to their occupations, such policies insuring to such employers the same compensations provided for their employees, and at the same rates; provided, however, that the estimation of their wage values, respectively, shall be reasonable and separately stated in and added to the valuation of their pay rolls upon which their premium is computed. The employer so insured shall have the same rights and remedies given an employee by this chapter.

ARTICLE 4.

State Workmen's Compensation Commission*

Sec. 60. Repealed.

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*Superseded by Industrial Commission (Chapter 674, Laws of 1915). See section 4, page 48 of this pamphlet.

61. Repealed.
62. Salaries and expenses.
63. Office.
64. Sessions of commission.
65. Powers of individual commissioners and deputy commissioners.
66. Powers and duties of secretary.
67. Rules.
68. Technical rules of evidence or procedure not required.
69. Issue of subpoena; penalty for failure to obey.
70. Recalcitrant witnesses punishable as for contempt.
71. Fees and mileage of witnesses.
72. Depositions.
73. Transcript of stenographer's minutes; effect as evidence.
74. Jurisdiction of commission to be continuing.
75. Report of commission.
76. Commission to furnish blank forms.
77. Expenses of administering commission.

Sec. 60. (Repealed by Chapter 674, Laws of 1915.)

Sec. 61. (Repealed by Chapter 674, Laws of 1915.)

Sec. 62. [As amended by Section 2 of Chapter 674, Laws of 1915.] Expenses. The commission may make the necessary expenditure to obtain statistical and other information to establish classifications of employments with respect to hazards and risks. The expenses of the commission, including the premiums to be paid by the state treasurer for the bond to be furnished by him, shall be paid out of the state treasury upon vouchers signed by at least two commissioners.

Sec. 63. Office. The commission shall keep and maintain its principal office in the city of Albany, in rooms in the capitol assigned by the trustees of public buildings. The office shall be supplied with necessary office furniture, supplies, books, maps, stationery, telephone connections and other necessary appliances, at the expense of the state, payable in the same manner as other expenses of the commission.

Sec. 64. Sessions of commission. The commission shall be in continuous session and open for the transaction of business during all business hours of every day excepting Sundays and legal holidays. All sessions shall be open to the public and may be adjourned, upon entry thereof in its records, without further notice. Whenever convenience of parties will be promoted or delay and expense prevented, the commission may hold sessions in cities other than the city of Albany. A party may appear before such commission and be heard in person or by attorney. Every vote and official act of the commission shall be entered of record, and the records shall contain a record of each case considered, and the award, decision or order made with respect thereto, and all voting shall be by the calling of each commissioner's name by the secretary and each vote shall be recorded as cast. A majority of the commission shall constitute a quorum. A vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the full commission so long as a majority remains.

Sec. 65. Powers of individual commissioners and deputy commissioners. Any investigation, inquiry or hearing which the commission is authorized to hold or undertake may be held or taken by or before any commissioner or deputy commissioner, and the award, decision or order of a commissioner or deputy commissioner, when approved and confirmed by the commission and ordered filed in its office, shall be deemed to be the award, decision or order

of the commission. Each commissioner and deputy shall, for the purposes of this chapter, have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony. The commission may authorize any deputy to conduct any such investigation, inquiry or hearing, in which case he shall have the power of a commissioner in respect thereof.

Sec. 66. Powers and duties of secretary. The secretary of the commission shall:

1. Maintain a full and true record of all proceedings of the commission, of all documents or papers ordered filed by the commission, of decisions or orders made by a commissioner or deputy commissioner, and of all decisions or orders made by the commission or approved and confirmed by it and ordered filed, and he shall be responsible to the commission for the safe custody and preservation of all such documents at its office;

2. Have power to administer oaths in all parts of the state, so far as the exercise of such power is properly incident to the performance of his duty or that of the commission;

3. Designate, from time to time, with the approval of the commission, one of the clerks appointed by the commission to exercise the powers and duties of the secretary during his absence;

4. Under the direction of the commission, have general charge of its office, superintend its clerical business, and perform such other duties as the commission may prescribe.

Sec. 67. [As amended by Chapter 622, Laws of 1916.] Rules. The commission shall adopt reasonable rules, not inconsistent with this chapter, regulating and providing for

1. The kind and character of notices, and the service thereof, in case of accident and injury to employees;

2. The nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the right to compensation;

3. The forms of application for those claiming to be entitled to compensation;

4. The method of making investigations, physical examinations and inspections;

5. The time within which adjudications and awards shall be made;

6. The conduct of hearings, investigations and inquiries;

7. The giving of undertakings by all subordinates who are empowered to receive and disburse moneys, to be approved by the attorney-general as to form and by the comptroller as to sufficiency;

8. Carrying into effect the provisions of this chapter.

9. The collection, maintenance and disbursement of the state insurance fund.

Sec. 68. Technical rules of evidence or procedure not required. The commission or a commissioner or deputy commissioner in making an investigation or inquiry or conducting a hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to ascertain the substantial rights of the parties.

Sec. 69. Issue of subpoena; penalty for failure to obey. A subpoena shall be signed and issued by a commissioner, a deputy commissioner or by the secretary of the commission and may be served by any person of full

age in the same manner as a subpoena issued out of a court of record. If a person fail, without reasonable cause, to attend in obedience to a subpoena, or to be sworn or examined or answer a question or produce a book or paper, or to subscribe and swear to his deposition after it has been correctly reduced to writing, he shall be guilty of a misdemeanor.

Sec. 70. Recalcitrant witnesses punishable as for contempt. If a person in attendance before the commission or a commissioner or deputy commissioner refuses, without reasonable cause, to be examined, or to answer a legal and pertinent question or to produce a book or paper, when ordered so to do by the commission or a commissioner or deputy commissioner, the commission may apply to a justice of the supreme court upon proof by affidavit of the facts for an order returnable in not less than two nor more than five days directing such person to show cause before the justice who made the order, or any other justice of the supreme court, why he should not be committed to jail. Upon the return of such order the justice shall examine under oath such person and give him an opportunity to be heard; and if the justice determine that he has refused without reasonable cause or legal excuse to be examined or to answer a legal and pertinent question, or to produce a book or paper which he was ordered to bring, he may forthwith, by warrant, commit the offender to jail, there to remain until he submits to do the act which he was so required to do or is discharged according to law.

Sec. 71. Fees and mileage of witnesses. Each witness who appears in obedience to a subpoena before the commission or a commissioner or deputy commissioner, or person employed by the commission to obtain the required information, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the supreme court, which shall be audited and paid from the state treasury in the same manner as other expenses of the commission. A witness subpoenaed at the instance of a party other than the commission, a commissioner, deputy commissioner or person acting under the authority of the commission shall be entitled to fees or compensation from the state treasury, if the commission certify that his testimony was material to the matter investigated, but not otherwise.

Sec. 72. Depositions. The commission may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the supreme court.

Sec. 73. Transcript of stenographer's minutes; effect as evidence. A transcribed copy of the testimony, evidence and procedure or of a specific part thereof, or of the testimony of a particular witness or of a specific part thereof, on any investigation, by a stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript thereof and to have been carefully compared by him with his original notes, may be received in evidence by the commission with the same effect as if such stenographer were present and testified to the facts so certified, and a copy of such transcript shall be furnished on demand to any party upon payment of the fee provided for a transcript of similar minutes in the supreme court.

Sec. 74. Jurisdiction of commission to be continuing. The power and jurisdiction of the commission over each case shall be continuing, and it may, from time to time, make such modification or change with respect to former findings or orders relating thereto, as in its opinion may be just.

*Sec. 75. [As re-enacted by Chapter 622, Laws of 1916.] Report of commission. Annually on or before the first day of February, the commission

*Re-enacted without change.

shall make a report to the legislature, which shall include a statement of the number of awards made by it and the causes of the accidents leading to the injuries for which the awards were made, a detailed statement of the expenses of the commission, the condition of the state insurance fund, together with any other matter which the commission deems proper to report to the legislature, including any recommendations it may desire to make.

Sec. 76. Commission to furnish blank forms. The commission shall prepare and cause to be distributed so that the same may be readily available blank forms of application for compensation, notice to employers, proofs of injury or death, of medical or other attendance or treatment, of employment and wage earnings, and for such other purposes as may be required. Insured employers shall constantly keep on hand a sufficient supply of such blanks.

†Sec. 77. [Added by Chapter 622, Laws of 1916.] Expenses of administering commission. As soon as practicable after July first, nineteen hundred and seventeen, and annually thereafter, the commission shall ascertain the total amount of its expenses incurred during the preceding fiscal year, in connection with the administration of the workmen's compensation law, and shall thereupon assess upon and collect from each insurance carrier, including the state insurance fund, the proportion of such expense that the total compensation or payments made by such carrier in such year bore to the total compensation or payments made by all insurance carriers. The amounts so secured shall be transferred to the state treasury to reimburse it for this portion of the expense of administering this chapter.

ARTICLE 5

State Insurance Fund

Sec. 90. Creation of state fund.
91. State treasurer custodian of fund.
92. Surplus and reserve.
93. Investment of surplus or reserve.
94. Administration expense.
95. Classification of risks and adjustment of premiums.
96. Associations for accident prevention.
97. Requirements in classifying employment and fixing and adjusting premium rates.
98. Time of payment of premiums.
99. Action for collection in case of default.
100. Withdrawal from fund.
101. Audit of payrolls.
102. Falsification of payroll.
103. Wilful misrepresentation.
104. Inspections.
105. Disclosures prohibited.
106. Reports of state insurance fund; examination by insurance department.

Sec. 90. Creation of state fund. There is hereby created a fund to be known as "The State Insurance Fund," for the purpose of insuring employers against liability under this chapter and of assuring to the persons entitled thereto the compensation provided by this chapter. Such fund shall consist of all premiums received and paid into the fund, of property and securities

†Chapter 622, Laws of 1916, adds this section to Article Seven. Inasmuch as this section relates to Article Four, and the number assigned to it (viz. 77) would place it in Article Four, we have so placed it.

acquired by and through the use of moneys belonging to the fund and of interest earned upon moneys belonging to the fund and deposited or invested as herein provided. Such fund shall be administered by the commission without liability on the part of the state beyond the amount of such fund. Such fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of expenses in the manner provided in this chapter.

Sec. 91. State treasurer custodian of fund. The state treasurer shall be the custodian of the state insurance fund; and all disbursements therefrom shall be paid by him upon vouchers authorized by the commission and signed by any two members thereof. The state treasurer shall give a separate and additional bond in an amount to be fixed by the governor and with sureties approved by the state comptroller conditioned for the faithful performance of his duty as custodian of the state fund. The state treasurer may deposit any portion of the state fund not needed for immediate use, in the manner and subject to all the provisions of law respecting the deposit of other state funds by him. Interest earned by such portion of the state insurance fund deposited by the state treasurer shall be collected by him and placed to the credit of the fund.

Sec. 92. [As amended by Chapter 622, Laws of 1916.] Surplus and reserves. Ten per centum of the premiums collected from employers insured in the fund shall be set aside by the commission for the creation of a surplus until such surplus shall amount to the sum of one hundred thousand dollars, and thereafter five per centum of such premiums, until such time as in the judgment of the commission such surplus shall be sufficiently large to cover the catastrophe hazard. The commission shall also set up and maintain reserves adequate to meet anticipated losses and carry all claims and policies to maturity, which reserves shall be computed in accordance with such rules as shall be approved by the superintendent of insurance.

Sec. 93. [As amended by Chapter 622, Laws of 1916.] Investment of surplus or reserve. Any of the surplus or reserve funds belonging to the state insurance fund may, pursuant to a resolution of the commission approved by the superintendent of insurance, be invested in or loaned on the pledge of any of the securities in which deposits of insurance corporations are required to be invested pursuant to section thirteen of the insurance law, or in the public stocks or bonds of any one of the United States, or in bonds and mortgages on improved unencumbered real property in this state worth fifty per centum more than the amount loaned thereon. All such securities or evidences of indebtedness shall be placed in the hands of the state treasurer who shall be the custodian thereof. He shall collect the principal and interest thereof, when due, and pay the same into the state insurance fund. The state treasurer shall pay all vouchers drawn on the state insurance fund for the making of such investments when signed by two members of the commission, upon delivery of such securities or evidences of indebtedness to him, when there is attached to such vouchers a certified copy of the resolution of the commission authorizing the investment. The commission may, upon like resolution approved by the superintendent of insurance, sell any of such securities.

Sec. 94. [As amended by Chapter 622, Laws of 1916.] Administration expense. The entire expense of administering the state insurance fund shall be paid in the first instance by the state, out of moneys appropriated therefor. In the month of July, nineteen hundred and seventeen, and annually thereafter in such month, the commission shall ascertain the just amount

incurred by the commission during the preceding fiscal year, in the administration of the state insurance fund, and shall refund such amount to the state treasury. If there be employees of the commission other than the commissioners themselves and the secretary whose time is devoted partly to the general work of the commission and partly to the work of the state insurance fund, and in case there is other expense which is incurred jointly on behalf of the general work of the commission and the state insurance fund, an equitable apportionment of the expense shall be made for such purpose and the part thereof which is applicable to the state insurance fund shall be chargeable thereto.

Sec. 95. Classification of risks and adjustment of premiums. Employments coming under the provisions of this chapter shall be divided for the purposes of the state fund, into the groups set forth in section two of this chapter. Separate accounts shall be kept of the amounts collected and expended in respect to each such group for convenience in determining equitable rates; but for the purpose of paying compensation the state fund shall be deemed one and indivisable. The commission shall have power to rearrange any of the groups set forth in section two by withdrawing any employment embraced in it and transferring it wholly or in part to any other group, and from such employments to set up new groups at its discretion. The commission shall determine the hazards of the different classes composing each group and fix the rates of premiums therefor based upon the total payroll and number of employees in each of such classes of employment at the lowest possible rate consistent with the maintenance of a solvent state insurance fund and the creation of a reasonable surplus and reserve; and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each individual risk.

Sec. 96. Associations for accident prevention. The employers in any of the groups described in section two or established by the commission may with the approval of the commission form themselves into an association for accident prevention, and may make rules for that purpose. If the commission is of the opinion that an association so formed sufficiently represents the employers in such group, it may approve such rules, and when so approved and approved by the industrial board of the labor department they shall be binding on all employers in such group. If such an approved association appoint an inspector or expert for the purpose of accident prevention, the commission may at its discretion provide in whole or in part for the payment of the remuneration and expenses of such inspector or expert, such payment to be charged in the accounting to such group. Every such approved association may make recommendations to the commission concerning the fixing of premiums for classes of hazards, and for individual risks within such group.

Sec. 97. [As amended by Chapter 622, Laws of 1916.] Requirements in classifying employment and fixing and adjusting premium rates. The following requirements shall be observed in classifying employments and fixing and adjusting premium rates:

1. The commission shall keep an accurate account of the money paid in premiums by each of the several classes of employments or industries, and the disbursements on account of injuries and deaths of employees thereof, including the setting up of reserves adequate to meet anticipated losses and to carry the claims to maturity, and also, on account of the money received from each individual employer and the amount disbursed from the state insurance fund on account of injuries and death of the employees of such employer, including the reserves so set up;

2. On January first, nineteen hundred and fifteen, and every fifth year thereafter, and at such other times as the commission, in its discretion, may determine, a readjustment of the rate shall be made for each of the several groups of employment or industries and of each hazard class therein, which, in the judgment of the commission, shall have developed an average loss ratio, in accordance with the experience of the commission in the administration of the law as shown by the accounts kept as provided herein;

3. If any such accounting show an aggregate balance (deemed by the commission to be safely and properly divisible) remaining to the credit of any class of employment or industry, after the amount required shall have been credited to the surplus and reserve funds and after the payment of all awards for injury or death lawfully chargeable against the same, the commission may in its discretion credit to each individual member of such group, who shall have been a subscriber to the state insurance fund for a period of six months or more prior to the time of such readjustment, and whose premium or premiums exceed the amount of the disbursements from the fund on account of injuries or death of his employees during such period, on the instalment or instalments of premiums next due from him such proportion of such balance as the amount of his prior paid premiums sustains to the whole amount of such premiums paid by the group to which he belongs since the last readjustment of rates. In the event that any member of the group who has heretofore or shall hereafter withdraw would have become entitled to such dividend if he had remained in the fund the commission is empowered to pay the amount of the dividend to such employer.

4. If the amount of premiums collected from any employer at the beginning of any period of six months is ascertained and calculated by using the estimated expenditure of wages for the period of time covered by such premium payment as a basis, an adjustment of the amount of such premium shall be made at the end of such six months, and the actual amount of such premium shall be determined in accordance with the amount of the actual expenditure of wages for such period; and, if such wage expenditure for such period is less than the amount on which such estimated premium was collected, such employer shall be entitled to receive a refund from the state insurance fund of the difference between the amount so paid by him and the amount so found to be actually due, or to have the amount of such difference credited on succeeding premium payments, at his option; and if such actual premium, when so ascertained, exceeds in amount a premium so paid by such employer at the beginning of such six months, such employer shall immediately upon being advised of the true amount of such premium due, forthwith pay to the treasurer of the state an amount equal to the difference between the amount actually found to be due and the amount paid by him at the beginning of such six months' period.

Sec. 98. Time of payment of premiums. Except as otherwise provided in this chapter, all premiums shall be paid by every employer into the state insurance fund on or before July first, nineteen hundred and fourteen, and semi-annually thereafter, or at such other time or times as may be prescribed by the commission. The commission shall mail a receipt for the same to the employer and place the same to the credit of the state insurance fund in the custody of the state treasurer.

Sec. 99. Action for collection in case of default. If an employer shall default in any payment required to be made by him to the state insurance fund, the amount due from him shall be collected by civil action against him in the name of the people of the state of New York, and it shall be the duty

of the commission on the first Monday of each month after July first, nineteen hundred and fourteen, to certify to the attorney-general of the state the names and residences, or places of business, of all employers known to the commission to be in default for such payment or payments for a longer period than five days and the amount due from such employer, and it shall then be the duty of the attorney-general forthwith to bring or cause to be brought against each such employer a civil action in the proper court for the collection of such amount so due, and the same when collected, shall be paid into the state insurance fund, and such employer's compliance with the provisions of this chapter requiring payments to be made to the state insurance fund shall date from the time of the payment of said money so collected as aforesaid to the state treasurer for credit to the state insurance fund.

*Sec. 100. [As re-enacted by Chapter 622, Laws of 1916.] Withdrawal from fund. Any employer may, upon complying with subdivision two or three of section fifty of this chapter, withdraw from the fund by turning in his insurance contract for cancellation, provided he is not in arrears for premiums due the fund and has given to the commission written notice of his intention to withdraw within thirty days before the expiration of the period for which he has elected to insure in the fund; provided that in case any employer so withdraws, his liability to assessments shall, notwithstanding such withdrawal, continue for one year after the date of such withdrawal as against all liabilities for such compensation accruing prior to such withdrawal.

Sec. 101. Audit of payrolls. Every employer who is insured in the state insurance fund shall keep a true and accurate record of the number of his employees and the wages paid by him, and shall furnish to the commission, upon demand, a sworn statement of the same. Such record shall be open to inspection at any time and as often as the commission shall require to verify the number of employees and the amount of the payroll.

Sec. 102. Falsification of payroll. An employer who shall wilfully misrepresent the amount of the payroll upon which the premiums chargeable by the state insurance fund is to be based shall be liable to the state in ten times the amount of the difference between the premiums paid and the amount the employer should have paid had his payroll been correctly computed; and the liability to the state under this section shall be enforced in a civil action in the name of the state insurance fund, and any amount so collected shall become a part of such fund.

Sec. 103. Wilful misrepresentation. Any person who wilfully misrepresents any fact in order to obtain insurance in the state insurance fund at less than the proper rate for such insurance, or in order to obtain payment out of such fund, shall be guilty of a misdemeanor.

Sec. 104. Inspections. The commission shall have the right to inspect the plants and establishments of employers insured in the state insurance fund; and the inspectors designated by the commission shall have free access to such premises during regular working hours.

Sec. 105. Disclosures prohibited. Information acquired by the commission or its officers or employees from employers or employees pursuant to this chapter shall not be opened to public inspection, and any officer or employee of the commission who, without authority of the commission or pursuant to its rules or as otherwise required by law shall disclose the same shall be guilty of a misdemeanor.

*Re-enacted without change.

Sec. 106. [Added by Chapter 622, Laws of 1916.] Reports of state insurance fund; examination by insurance department. The commission shall make reports to the superintendent of insurance concerning the state insurance fund at the same times and in the same manner as is required from mutual employers' liability and workmen's compensation corporations by section one hundred and ninety-two of the insurance law, and the superintendent of insurance may examine into the condition of such state isurance fund at any time, either personally or by any duly authorized examiner appointed by him, for the purpose of determining the condition of the investments and the adequacy of the reserves of such fund.

ARTICLE 6

Miscellaneous Provisions

Section 110. Penalties applicable to expense of commission.
111. Record and report of injuries by employers.
112. Information to be furnished by employer.
113. Inspection of records of employers.
114. Interstate commerce.
115. Penalties for false representations.
116. Limitation of time.
117. Duties of commissioner of labor.
118. Unconstitutional provisions.
119. Actions or causes of action pending.

Sec. 110. Penalties applicable to expenses of commission. All penalties imposed by this chapter shall be applicable to the expenses of the commission. When collected by the commission such penalties shall be paid into the state treasury and be thereafter appropriated by the legislature for the purposes prescribed by this section.

Sec. 111. Record and report of injuries by employers. Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within ten days after the occurrence of an accident resulting in personal injury a report thereof shall be made in writing by the employer to the commission upon blanks to be procured from the commission for that purpose. Such report shall state the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employee, the time, nature and cause of the injury and such other information as may be required by the commission. An employer who refuses or neglects to make a report as required by this section shall be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars.

Sec. 112. Information to be furnished by employer. Every employer shall furnish the commission, upon request, any information required by it to carry out the provisions of this chapter. The commission, a commissioner, deputy commissioner, or any person deputized by the commission for that purpose, may examine under oath any employer, officer, agent or employee. An employer or an employee receiving from the commission a blank with directions to file the same shall cause the same to be properly filled out so as to answer fully and correctly all questions therein, or if unable to do so, shall give good and sufficient reasons for such failure. Answers to such questions shall be verified under oath and returned to the commission within the period fixed by the commission therefor.

Sec. 113. Inspection of records of employers. All books, records and payrolls of the employers showing or reflecting in any way upon the amount

of wage expenditures of such employers shall always be open for inspection by the commission or any of its authorized auditors, accountants or inspectors for the purpose of ascertaining the correctness of the wage expenditure and number of men employed and such other information as may be necessary for the uses and purposes of the commission in the administration of this chapter.

Sec. 114. Interstate commerce. The provisions of this chapter shall apply to employers and employees engaged in intrastate, and also in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that such employer and his employees working only in this state may, subject to the approval and in the manner provided by the commission and so far as not forbidden by any act of congress, accept and become bound by the provisions of this chapter in like manner and with the same effect in all respects as provided herein for other employers and their employees.

Sec. 115. Penalties for false representation. If for the purpose of obtaining any benefit or payment under the provisions of this chapter, either for himself or any other person, any person wilfully makes a false statement or representation, he shall be guilty of a misdemeanor.

Sec. 116. Limitation of time. No limitation of time provided in this chapter shall run as against any person who is mentally incompetent or a minor dependent so long as he has no committee, guardian or next friend.

Sec. 117. Duties of commissioner of labor. The commissioner of labor shall render to the commission any proper aid and assistance by the department of labor as in his judgment does not interfere with the proper conduct of such department.

Sec. 118. Unconstitutional provisions. If any section or provision of this chapter be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the chapter as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Sec. 119. Actions or causes of action pending. This act shall not affect any action pending or cause of action existing or which accrued prior to July first, nineteen hundred and fourteen.

ARTICLE 7.

Laws Repealed; When to Take Effect

Section 130. Laws repealed.
131. When to take effect.

Sec. 130. Laws repealed. Article fourteen-a and sections two hundred and fifteen to two hundred and nineteen-g, both inclusive, of chapter thirty-six of the laws of nineteen hundred and nine, as amended by chapter six hundred and seventy-four of the laws of nineteen hundred and ten, are hereby repealed.

Sec. 131. When to take effect. This chapter shall take effect immediately, provided that the application of this chapter as between employers and employees and the payment of compensation for injuries to employees or their dependents, in case of death, shall take effect July first, nineteen hundred and fourteen, but payments into the state insurance fund may be made prior to July first, nineteen hundred and fourteen.

CHAPTER 674, LAWS OF 1915

AN ACT

TO AMEND THE LABOR LAW, ESTABLISHING THE STATE INDUSTRIAL COMMISSION, DEFINING ITS POWERS AND DUTIES, TRANSFERRING THERETO THE POWERS AND DUTIES OF THE WORKMEN'S COMPENSATION COMMISSION AND ABOLISHING THE OFFICES OF COMMISSIONER OF LABOR AND DEPUTY COMMISSIONERS OF LABOR, THE INDUSTRIAL BOARD AND THE WORKMEN'S COMPENSATION COMMISSION.

Became a law May twenty-two, nineteen hundred and fifteen, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article three and article three-a of chapter thirty-six of the laws of nineteen hundred and nine, entitled "An act relating to labor, constituting chapter thirty-one of the consolidated laws" as amended by chapter five hundred and fourteen of the laws of nineteen hundred and ten, chapters five hundred and sixty-five and seven hundred and twenty-nine of the laws of nineteen hundred and eleven, chapter three hundred and eighty-two of the laws of nineteen hundred and twelve, chapter one hundred and forty-five of the laws of nineteen hundred and thirteen, and chapter one hundred and eighty-one of the laws of nineteen hundred and fourteen, are hereby amended to read as follows:

ARTICLE 3

Department of Labor

Section 40. Industrial commission created.
40-a. Industrial council.
41. Deputy commissioners.
42. Bureaus.
43. Powers.
44. Expenses.
45. Distribution of responsibility.
46. Reports.
47. Old records.
48. Counsel.
49. Secretary.
49-a. Officers and employees.
50. Meetings.
51. Investigations.
51-a. Rules and regulations.
52. Industrial code; procedure.
52-a. Review by commission.
52-b. Review by court.
52-c. Limited review of provisions of chapter and of rules, regulations and orders.
52-d. Variations.
52-e. Protection of employees.

Sec. 40. Industrial commission created. There shall be a department of labor, the head of which shall be the industrial commission. The com-

mission shall consist of five commissioners appointed by the governor by and with the advice and consent of the senate, one of whom shall be designated by the governor as chairman. Upon the appointment of a successor to the chairman the governor shall designate such successor or any member of the commission as chairman thereof. The term of office of each commissioner shall be six years, except that the term of the commissioners first appointed shall expire, one on January first, nineteen hundred and seventeen, one on January first, ninteen hundred and eighteen, one on Jauary first, nineteen hundred and nineteen, one on January first, nineteen hundred and twenty and one on January first, nineteen hundred and twenty-one. Their successors shall be appointed for full terms of six years from the expiration of the terms of their predecessors in office. If a vacancy occurs otherwise than by expiration of a term, it shall be filled by appointment for the unexpired term. Each commissioner shall receive an annual salary of eight thousand dollars, and shall devote his entire time to the duties of his office. Not more than three commissioners shall be members of the same political party.

The governor may remove a commissioner for inefficiency, neglect of duty or misconduct in office, giving him a copy of the charges and an opportunity of being publicly heard in person or by counsel on not less than ten days' notice. If the commissioner be removed, the governor shall file in the office of the secretary of state a complete record of his proceedings with regard to such removal and his findings thereon.

The commission may adopt a seal and require that it be used for the authentication of the commission's orders and proceedings and for such other purposes as the commission may prescribe. The court shall take judicial notice of such seal and of the signatures of the chairman and secretary of the commission.

Sec. 40-a. Industrial council. (1) To advise the commission there shall be an industrial council composed of ten members appointed by the governor. Five members of the council shall be persons known to represent the interests of employees and five shall be persons known to represent the interests of employers. The governor may remove any member of the council when such member ceases to represent the interests in whose behalf he was appointed.

(2) The council shall organize by electing as chairman any person not a member of the council. The chairman shall preside at meetings of the council and may take part in its deliberations, but shall have no vote. The secretary of the commission shall act as secretary to the council and the commission shall detail from time to time to the assistance of the council such employees as may be necessary.

(3) No compensation or expenses shall be paid from the treasury to the members of the council.

(4) The council shall: (a) consider all matters submitted to it by the industrial commission and advise the commission with respect thereto; (b) co-operate with the civil service commission in conducting examinations and in preparing lists of eligibles for positions, the duties of which require special knowledge or training, and advise the industrial commission in the selection and appointment of employees to such positions. The council shall adopt rules and regulations to govern its own proceedings. The secretary shall keep a complete record of all its proceedings which shall show the names of the members present at each meeting, and every matter submitted to the council by the commission and the action of the council thereon. The record shall be filed in the commission's office. All records and other documents

of the commission shall be subject to inspection by the members of the council.

Sec. 41. Deputy commissioners. The commission shall appoint and may remove a first deputy commissioner who shall be in charge of the bureau of inspection; a second deputy commissioner who shall be in charge of the workmen's compensation bureau; a third deputy commissioner who shall be in charge of the bureau of mediation and arbitration.

The annual salaries of the deputies shall be as follows: first deputy, six thousand dollars; second deputy, six thousand dollars; third deputy, five thousand dollars.

Sec. 42. Bureaus. The department of labor shall have the following bureaus: inspection; statistics and information; mediation and arbitration; industries and immigration; employment; workmen's compensation; and such other bureaus as the commission may deem necessary. Each bureau and division of the department and the persons in charge thereof shall be subject to the supervision and direction of the commission and of any commissioner duly designated to supervise the work of such bureau, and in addition to their respective duties as prescribed by this chapter shall perform such other duties as may be assigned to them by the commission.

Sec. 43. Powers. 1. The commissioners, deputy commissioners, secretary and other officers and assistants of the commission may administer oaths and take affidavits in matters relating to the powers and duties of the commission.

2. No person shall interfere with, obstruct or hinder by force or otherwise the commissioners, deputy commissioners, or any officer, agent or employee of the department of labor while in the performance of their duties, or refuse to properly answer questions asked by such officers or employees pertaining to the provisions of this chapter, or refuse them admittance to any place which is affected by the provisions of this chapter.

3. All notices, orders and directions of any officer, agent or employee of the department of labor other than the commission given in accordance with this chapter are subject to the approval of the commission and may be performed or given by and in the name of the commission and by any officer or employee of the department thereunto duly authorized by the commission in its name.

4. The commission may procure and cause to be used badges for the officers, agents and employees in the department of labor while in the performance of their duties.

Sec. 44. Expenses. All necessary expenses incurred by the commission in the discharge of its duties shall be paid by the state treasurer upon the warrant of the comptroller issued upon proper vouchers therefor. The reasonable and necessary traveling and other expenses of the deputy commissioners, the secretary of the commission, inspectors, investigators and other officers, assistants, agents and employees of the commission while engaged in the performance of their duties shall be paid in like manner upon vouchers approved by the commission and audited by the comptroller.

Sec. 45. Distribution of responsibility. At the first meeting of the commission after its appointment, and at least once in each year thereafter, the commission shall by resolution duly approved, apportion the administrative work involved in the performance of its duties and the exercise of its powers under this chapter and under the workmen's compensation law, among the members of the commission and shall designate the portion of such work which each of its members, under the direction and control of the commission, shall supervise and be responsible for.

The commission shall submit all questions of general policy arising in the exercise of its powers or the performance of its duties under the provisions of this chapter or under the provisions of the workmen's compensation law to the industrial council or its members for their consideration and advice.

Sec. 46. Reports. The commission shall report annually to the legislature and shall include in his annual report or make separately in each year a report of the operation of each bureau in the department.

Sec. 47. Old records. All statistics furnished to and all complaints, reports and other documentary matter received by the commission pursuant to this chapter or any act repealed or superseded thereby may be destroyed by such commission after the expiration of six years from the time of the receipt thereof.

Sec. 48. Counsel. The commission may appoint and at pleasure remove as counsel to the commission an attorney and counsellor at law of the state of New York who shall represent the department of labor or the commission and take charge of and assist in the prosecution of actions and proceedings brought by or on behalf of the commission or the department and who shall generally act as legal advisor to the commission. Such counsel shall receive an annual salary of six thousand dollars. The commission may appoint and at pleasure remove not exceeding three attorneys and counsellors at law to assist the counsel in the performance of his duties and may fix their compensation within the limits of the annual appropriation provided therefor.

Sec. 49. Secretary. The commission shall appoint and may remove a secretary, at an annual salary of six thousand dollars. The secretary shall perform such duties in connection with the meetings of the commission and its investigations, hearings and the preparation of rules and regulations under the provisions of this chapter as the commission may prescribe; and shall perform the duties of secretary of the workmen's compensation commission, as prescribed by the workmen's compensation law.

Sec. 49-a. Officers and employees. The commission may appoint such additional deputy commissioners, and such officers, statisticians, actuaries, accountants, physicians, experts and other assistants and employees as may be necessary for the exercise of its powers and the performance of its duties under the provisions of this chapter and of the workmen's compensation law, all of whom shall be in either the competitive or the non-competitive class of the classified civil service; and the commission shall prescribe their duties and fix their salaries which shall not exceed in the aggregate the amount annually appropriated by the legislature for that purpose.

Sec. 50. Meetings. The commission shall hold stated meetings, at least once a month at the office of the department in Albany or in New York city, and shall hold other meetings when and where called by the chairman or two members of the commission. All meetings of the commission shall be open to the public. The commission shall keep records of its investigations and other official actions, and minutes of its proceedings showing the vote of each member upon every question.

Sec. 51. Investigations. The commission shall have power to make investigations concerning and report upon the conditions of labor generally and upon all matters relating to the enforcement and effect of the provisions of this chapter and of the rules and regulations of the commission. Each member of the commission and the secretary shall have power to administer oaths and take affidavits and to make personal inspections of all places to which this chapter applies. The commission shall have power to subpoena

and require the attendance of witnesses and the production of books and papers pertinent to the investigations and inquiries hereby authorized, and to examine them in relation to any matter it has power to investigate, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commission, or excused from attendance.

Sec. 51-a. Rules and regulations. (1) The commission shall have power to make, amend and repeal rules and regulations for carrying into effect the provisions of this chapter, applying such provisions to specific conditions and prescribing means, methods and practices to effectuate such provisions.

(2) The commission shall have power to make, amend and repeal rules and regulations for proper sanitation in all places to which this chapter applies, and for guarding against and minimizing fire hazards, personal injuries and diseases in all places to which this chapter applies, with respect to

a. The construction, alteration, equipment and maintenance of all such places, including the conversion of structures into factories, factory buildings and mercantile establishments;

b. The arrangement and guarding of machinery and the storing and keeping of property and articles;

c. The places where and the methods and operation by which trades and occupations may be conducted, and the conduct of employers, employees and other persons;

It being the policy and intent of this chapter that all places to which it applies shall be so constructed, equipped, arranged, operated and conducted in all respects as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein, and frequenting the same, and that the commission shall from time to time make such rules and regulations as will effectuate such policy and intent.

(3) Whenever the commission finds that any industry, trade, occupation or process involves such elements of danger to the lives, health or safety of persons employed therein as to require special regulation for the protection of such persons, the commission shall have power to make special rules and regulations to guard against such elements of danger by establishing requirements as to temperature, humidity, the removal of dusts, gases or fumes and requiring licenses to be applied for and issued by the commission as a condition of carrying on any such industry, trade, occupation or process and requiring medical inspection and supervision of persons employed and applying for employment, and by other appropriate means.

(4) The rules and regulations may be limited in their application to certain classes of establishments, places of employment, machines, apparatus, articles, processes, industries, trades or occupations or may apply only to those to be constructed, established, installed or provided in the future.

(5) The rules and regulations of the commission shall have the force and effect of law and shall be enforced in the same manner as the provisions of this chapter.

(6) No provision of this chapter specifically conferring power on the commission to make rules and regulations shall limit the power conferred by this section.

Sec. 52. Industrial code; procedure. The rules and regulations of the commission shall constitute the industrial code. At least three affirmative votes shall be necessary for the adoption, amendment or repeal of any rule or regulation. Before any rule or regulation is adopted, amended or repealed, there shall be a public hearing thereon, notice of which shall be published at least once, not less than ten days prior thereto, in such newspapers as

the commission may prescribe, and in the City Record in the city of New York. The commission may appoint committees composed of employers, employees and experts to assist it in framing rules and regulations and shall submit all proposed rules and regulations to the industrial council or the members thereof for their consideration and advice. Every rule and regulation adopted, every amendment or repeal thereof and every act of the commission shall be promptly published in the bulletins of the department and in the City Record in the city of New York. The rules and regulations and all amendments and repeals thereof shall, unless otherwise prescribed by the commission, take effect twenty days after the first publication thereof, and every rule and regulation and every amendment or repeal thereof, shall be certified by the secretary of the commission and filed with the secretary of state.

Sec. 52-a. Review by commission. 1. Any person in interest may petition the commission for a review of the validity or reasonableness of any rule, regulation or order made by the commission or otherwise under the provisions of this chapter.

2. The petition shall be verified and filed with the commission and shall state in full detail: (a) The rule, regulation or order upon which the hearing is desired; in what respects it is claimed to be invalid or unreasonable; (c) the issues to be considered by the commission on the hearing.

The commission may join in one proceeding all petitioners alleging invalidity or unreasonableness of the same or substantially similar rules, regulations or orders. The petitioner shall be deemed to have waived all objections to any irregularities or illegalities in the rule, regulation or order upon which a hearing is sought other than those set forth in the petition.

3. Upon receipt of the petition, the commission shall, if necessary to determine the issues raised, order a hearing, or if the issues have been adequately considered in a prior proceeding under this section or otherwise, the commission may, without hearing, confirm its previous determination. Notice of the time and place of hearing, which shall be open to the public, shall be given to the petitioner and to such other persons as the commission may find directly interested in the issues raised by the petitioner.

4. If, upon such hearing, the commission finds that the rule, regulation, or order complained of is invalid or unreasonable it shall revoke it or substitute therefor a new or amended one. If the substituted rule, regulation or order involves a substantial amendment of the original one, the parties may, by new petition, bring before the commission all objections to its validity and reasonableness and no action under the provisions of section fifty-two-b shall meanwhile be entertained by the court.

5. The decision of the commission shall be final unless within thirty days after its issuance one of the parties to the proceeding before the commission appeals from its decision by bringing an action as provided in section fifty-two-b.

Sec. 52-b. Review by court. 1. Any person in interest may bring an action in the supreme court against the commission as defendant, to determine the validity and reasonableness of any provision of this chapter or of the rules and regulations made in pursuance thereof or of any order directing compliance therewith, provided that no such action to determine the validity or reasonableness of any rule, regulation or order shall be brought, except as an appeal from the determination of the commission, as provided in section fifty-two-a.

2. If the action is an appeal from a determination of the commission the commission shall file with the clerk of the court a certified copy of the

record of its hearing in the matter, and if the appeal is from a determination of the commission refusing a hearing on the ground that the issues have been determined in a prior proceeding, the commission shall also file with the clerk of the court a certified copy of the records of its hearings in the prior proceedings.

3. Such action shall have precedence over other actions in the same court in accordance with the provisions of subdivision one of section seven hundred and ninety-one of the code of civil procedure.

4. The court shall thereafter try the issues and render its decision based upon the record of the commission's hearings as well as the evidence submitted in the action before it. The court may refer any issue arising in such action to the commission for further consideration. At any time during such action the party appealing from the commission's decision shall have the right to apply, without notice, to the court for an order directing all questions of fact arising upon one or more specified issues to be tried and determined by a jury, and the court shall thereupon cause these questions to be distinctly and plainly stated for trial accordingly, and the findings of the jury upon such questions so stated shall be conclusive in the action. Appeals from the supreme court to the appellate division of the supreme court and to the court of appeals may be taken in such cases and subject to the same limitations as in other cases.

Sec. 52-c. Limited review of provisions of chapter and of rules, regulations and orders. 1. Every provision of this chapter and of the rules and regulations made in pursuance thereof, and every order directing compliance therewith shall be valid and in full force and effect unless declared invalid in a proceeding for review brought under the provisions of section fifty-two-a. Except as provided in section fifty-two-b no court shall have jurisdiction to review, reverse or annul any such provision or order or to enjoin, restrain or interfere with its enforcement.

2. Every such provision or order shall in a prosecution or action to impose a penalty for its violation be deemed valid and in full force and effect, unless prior to the commencement of the prosecution or action such provision or order has been revoked, or modified by the commission, or annulled by a court having jurisdiction thereof, in proceedings brought under the provisions of sections fifty-two-a or fifty-two-b, or unless such proceedings are pending in which case the prosecution or action shall be stayed by the court and abide the final determination thereof. If any such prosecution or action is commenced against a defendant who has not previously been served with an order to comply with such provision, or who has been served with such an order but has not had a reasonable opportunity to comply therewith, and if within five days the defendant commences proceedings under the provisions of sections fifty-two-a or fifty-two-b, the prosecution or action shall be stayed as if such proceedings had been pending at the time it was commenced.

Sec. 52-d. Variations. If in the opinion of the commission there shall be practical difficulties in carrying out the strict letter of a provision of this chapter or of a rule or regulation adopted by the commission affecting the construction or alteration of buildings and structural changes therein, the installation of fixtures and apparatus safeguarding the machinery and prevention of accidents, a variation from or modification of its requirements so that the spirit of the provision or rule or regulation shall be observed, public safety secured and substantial justice done, may be permitted by the commission as provided by this section. The person affected by such provision

or rule or regulation or his agent may petition the commission for one or more such variations or modifications stating the grounds therefor. The commission shall fix a day within a reasonable time for a hearing on the petition and upon the hearing the petitioner may appear in person or by agent or attorney. The decision of the commission shall be rendered promptly and shall be final. A copy of the petition and the decision shall be filed by the secretary of the commission in his office and if the petition be allowed wholly or in part a certificate stating the reason for such allowance shall be filed in like manner.

Powers conferred upon the commission by this section shall be subject to the requirement of this chapter that all places to which it applies shall be so constructed, equipped, arranged, operated and conducted in all respects as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein.

Sec. 52-e. Protection of employees. The commission shall render all aid and assistance necessary for the enforcement of any claim by an employee against his employer which the commission finds reasonable and just and for the protection of employees from frauds, extortions, exploitation, or other improper practices on the part of any person, public or private; and shall investigate such cases for the purpose of presenting the facts to the proper authorities and of inducing action thereon by the various agencies of the state possessing the requisite jurisdiction.

Sec. 2. Section sixty-two of the workmen's compensation law is hereby amended to read as follows:

Sec. 62. Expenses. The commission may make the necessary expenditure to obtain statistical and other information to establish classifications of employments with respect to hazards and risks. The expenses of the commission, including the premiums to be paid by the state treasurer for the bond to be furnished by him, shall be paid out of the state treasury upon vouchers signed by at least two commissioners.

Sec. 3. Offices of commisioner and deputy commissioners of labor abolished. On and after the appointment and qualification of the members of the industrial commission, the office of commissioner of labor as created by section forty of the labor law, as amended by chapter seven hundred and twenty-nine of the laws of nineteen hundred and eleven, and chapter one hundred and forty-five of the laws of nineteen hundred and thirteen shall be abolished and the powers and duties of the commissioner of labor, then in office, shall cease. The offices of first and second deputy commissioners of labor are hereby abolished, and the powers and duties of the said deputy commissioners then in office shall cease upon the appointment by the industrial commission of the deputy industrial commissioners herein provided for.

Sec. 4. Workmen's compensation commission abolished. The state workmen's compensation commission created as provided in section sixty of the workmen's compensation law is hereby abolished, and the terms of the office of the members of such commission then in office shall cease on the appointment and qualification of the members of the industrial commission. All the powers, duties, obligations and liabilities conferred or imposed by law upon the workmen's compensation commission by the workmen's compensation law or any other statute are hereby conferred and imposed upon the state industrial commission and such commission may exercise and perform such powers and duties and shall be subject to such obligations and liabilities in the same manner, to the same extent and with the same force and effect as would have been the case had the workmen's compensation commission

been continued in office. For the purpose of exercising such powers, performing such duties, being subjected to such obligations and liabilities, the state industrial commission shall be deemed to be a continuation of such workmen's compensation commission. The offices of secretary to the workmen's compensation commission and of the deputies appointed by the workmen's compensation commission, are hereby abolished; and the powers and duties of such officers then in office shall cease upon the appointment and qualification of the members of the industrial commission.

Sec. 5. All other officers, assistants, inspectors and employees of the department of labor or the workmen's compensation commission in office when this act takes effect shall continue in office until removed by the industrial commission or until their offices are abolished as provided by law.

Sec. 6. Rules and regulations continued; pending actions or proceedings. The rules, regulations and orders of the commissioner of labor, the industrial board, or the workmen's compensation commission in force when this act takes effect enacted or promulgated pursuant to law are continued in full force and shall be operative until modified, superseded or repealed by the industrial commission. This act shall not affect pending cases or proceedings, civil or criminal, brought by or against the commissioner of labor or the workmen's compensation commission. All proceedings, hearings, investigations and other matters pending before the commissioner of labor, the industrial board, or the workmen's compensation commission shall be continued and brought to a final determination before the industrial commission in the same manner as though the commissioner of labor, the industrial board and the workmen's compensation commission had been continued in office. Any award or determination made by the workmen's compensation commission prior to the taking effect of this act shall have the same force and effect as though the workmen's compensation commission had been continued in office.

Sec. 7. Construction. Whenever the term "department of labor," "commissioner of labor," "industrial board," or "workmen's compensation commission" occurs in any law or in any rule or regulation made in pursuance of law, or whenever in any law reference is made to such department, commissioner, board, commission or officer, such term or reference shall be deemed to mean the industrial commission as established by this act.

Sec. 8. Repeal. Sections sixty and sixty-one of the workmen's compensation law are hereby repealed.

Sec. 9. This act shall take effect immediately.

State of New York
Office of the Secretary of State, ss:

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom, and of the whole of said original law.

Given under my hand and seal of office of the Secretary of State, at the City of Albany, this seventh day of June, in the year one thousand nine hundred and fifteen.

C. W. TAFT,
Second Deputy Secretary of State.

CHAPTER 16, LAWS OF 1914

AN ACT

TO AMEND THE INSURANCE LAW, IN RELATION TO THE APPROVAL OF PREMIUM RATES OF CORPORATIONS AND ASSOCIATIONS TRANSACTING THE BUSINESS OF WORKMEN'S COMPENSATION INSURANCE.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article one of chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended by adding at the end thereof a new section, to be section sixty-seven, to read as follows:

Sec. 67. Approval of premium rates. Every insurance corporation or association, except the state insurance fund as administered by the state workmen's compensation commission, authorized to transact business in this state, which insures employers against liability for compensation under the workmen's compensation law, shall file with the superintendent of insurance its classification of risks and premiums relating thereto, and any subsequent proposed classification of risks and premiums, together with basis rates and schedules, if a system of schedule rating be in use, none of which shall take effect until the superintendent of insurance shall have approved the same as adequate for the risks to which they respectively apply. The superintendent of insurance may withdraw his approval of any premium rate or schedule made by any insurance corporation or association if, in his judgment, such premium rate or schedule is inadequate to provide the necessary reserves.

Sec. 2. This act shall take effect immediately.

Approved by Governor, March 5, 1914.

CHAPTER 832, LAWS OF 1913
AS AMENDED BY CHAPTER 506, LAWS OF 1915, AND BY
CHAPTER 393, LAWS OF 1916

AN ACT

TO AMEND THE INSURANCE LAW, IN RELATION TO THE CREATION OF MUTUAL COMPANIES TO INSURE EMPLOYERS AGAINST LOSS, DAMAGE OR COMPENSATION RESULTING FROM INJURIES SUFFERED BY EMPLOYEES OR OTHER PERSONS FOR WHICH THE PERSON INJURED IS LIABLE.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," amended by Chapter 832, Laws of 1913, is further amended by Chapter 506, Laws of 1915, to read as follows:

ARTICLE 5-A

MUTUAL EMPLOYERS' LIABILITY AND WORKMEN'S COMPENSATION CORPORATIONS

Section 185. Incorporation.
186. Completion of organization.
187. Directors and officers.
188. Meetings.
189. Assessments.
190. Dividends.
191. Reserves; suspension; cancellation and reinstatement of certificate.
192. Reports to and examinations by superintendent.
193. Prevention of accidents.
194. Authorization of foreign mutual insurance corporations.

Sec. 185. Incorporation. Thirteen or more persons may become a corporation for the purpose of insuring on the mutual plan against loss or damage resulting from accident to or injury suffered by an employee or other person and for which the person insured is liable, or the liability of the employer to pay compensation to his employees, or the compensation of employees under any workmen's compensation law, or against loss or damage caused by a truck, wagon or other vehicle propelled by steam, gas, gasoline, electric, mechanical or other power or drawn by horses or mules, used in trade or manufacture and owned by any such person to the property of another for which loss or damage the person insured is liable, by making and filing in the office of the superintendent of insurance a certificate to be signed by each of them, stating their intention to form a corporation for the purpose named, and setting forth a copy of the charter which they propose to adopt, which shall state the name of the proposed corporation, the place where it is to be located, the mode and manner in which its corporate powers are to be exercised, the number of directors, the manner of electing its directors and officers, the time of such elections, the manner of filling vacancies, the names and post office addresses of the directors who will serve until the first annual meeting of such corporation, and such further particulars as may be necessary to explain and make manifest the objects and purposes of the corporation. Such certificate shall be proved or acknowledged and

recorded in a book kept for that purpose by the superintendent of insurance and a certified copy thereof shall be delivered to the persons executing the same.

Sec. 186. [As amended by Chapter 506, Laws of 1915.] Completion of organization. Upon receipt of a certified copy of the certificate of incorporation from the superintendent of insurance, the persons signing such certificate may open books to receive applications for membership therein. No such corporation shall transact any business of insurance unless the annual premium cost on the insurance applied for shall be not less than twenty-five thousand dollars at the minimum annual rates approved by the superintendent of insurance and until at least forty employers employing not less than twenty-five hundred employees; or thirty employers employing not less than five thousand employees; or twenty employers employing not less than seven thousand five hundred employees; or ten employers employing not less than ten thousand employees, have become members of such corporation and applied for and agreed to take insurance therein, covering the liability of such employers to their employees for accidents to or injuries suffered by such employee nor until the facts specified in this section have been certified under oath by at least three of the persons signing the original certificate, to the superintendent of insurance, and the superintendent of insurance has issued a license to such corporation authorizing such corporation to begin writing the insurance specified in this article. The superintendent of insurance must be satisfied that the membership list of the corporation is genuine, and that every member thereof will take the policies as agreed by him within thirty days of the granting of the license to the corporation by the superintendent of insurance to issue policies. If at any time the number of members or the number of employees who are employed by the members of the corporation falls below the number required by this section, no further policies shall be issued by the corporation until other employers have made bona fide applications for insurance therein, who, together with the existing members, amount to not less than forty employers who employ not less than twenty-five hundred employees, or thirty employers who employ not less than five thousand employees, or twenty employers who employ not less than seven thousand five hundred employees, or ten employers who employ not less than ten thousand employees, and in the event that such applications for insurance shall not be obtained within a reasonable time, to be fixed by the superintendent of insurance, such superintendent may take the proceedings against such corporation under section sixty-three of this chapter to the same effect as if clause h of subdivision one of such section was specifically applicable to corporations organized under this article.

The members of the corporation shall be policyholders therein, and when any member ceases to be a policyholder he shall cease, at the same time, to be a member of the corporation. A corporation, partnership, association or joint-stock company may become a member of such insurance corporation and may authorize another person to represent it in such insurance corporation, and such representative shall have all the rights of any individual member. Any person acting as employer in the capacity of a trustee may insure in such corporation and as such trustee may assume the liabilities and be entitled to the rights of a member, but shall not be personally liable upon such contract of insurance.

Such corporation may borrow money or assume liability in a sum sufficient to defray the reasonable expenses of its organization.

Sec. 187. Directors and officers. Any such corporation shall have not

less than thirteen directors, and such officers as shall be provided in the certificate of incorporation or by the by-laws made by the members. The directors shall be elected annually by the votes of the members. All except two of the directors of the corporation elected after the organization of the corporation is completed and it is authorized to begin to issue insurance policies shall be members of the corporation. All the officers except the secretary, assistant secretary and the actuary must be members of the board of directors.

Sec. 188. [As amended by Chapter 506, Laws of 1915.] Meetings; basis of right to vote. At all meetings of the members of the corporation each member shall have one vote and one additional vote for every five hundred employees or major fraction thereof, covered by the policy held by such member in the corporation, provided that no member shall have more than twenty votes. The number of votes of a member shall be determined by the average number of employees at work and covered by said member's policy in the corporation during the last six months from a date not more than ten days immediately prior to the date of any such meeting. Before any member shall be permitted to cast more than one vote at any meeting of members he shall file with the secretary an affidavit showing the average number of employees at work during the preceding six months covered by the employer's policy of insurance.

Sec. 189. Assessments. The corporation may in its by-laws and policies fix the contingent mutual liability of the members for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a member shall not be less than an amount equal to and in addition to the cash premium written in the policy. If the corporation is not possessed of cash funds above its unearned premium sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the members liable to assessment therefor, in proportion to their several liability. Every member shall be liable to pay and shall pay his proportionate part of any assessment which may be laid by the corporation in accordance with law and his contract, on account of losses and expenses incurred while he was a member, if he is notified of such assessment within one year after the expiration of his policy. All assessments shall be based upon present values of all future payments, and all proposed premium assessments shall be filed in the insurance department and shall not take effect until approved by the superintendent of insurance, after such investigation as he may deem necessary. All funds of the corporation and the contingent liability of the members thereof shall be available for the payment of any claim against the corporation.

Sec. 190. [As amended by Chapter 393, Laws of 1916.] Dividends. The board of directors may, from time to time, fix and determine the amount to be paid as a dividend upon policies expiring during each year after retaining sufficient sums to pay all the compensation and other policy obligations which may be payable on account of the injuries sustained and expenses incurred. Such dividend shall not take effect nor be distributed until approved by the superintendent of insurance after such investigation as he may deem necessary. Any such corporation may hold cash assets in excess of its liabilities, but such excess shall be limited to one hundred per centum of its reserves for losses and expenses incurred, and may be used from time to time in payment of losses, dividends and expenses.

Sec. 191. [As amended by Chapter 506, Laws of 1915.] Reserves; suspension; cancellation and reinstatement of certificate. Such corporation shall

be required to maintain the same reserves for the protection of policyholders and employees who may have a right of action directly against such corporation as are required to be maintained by stock insurance corporations in relation to the same class of insurance, except that reserves for liability for insurance of compensation under the workmen's compensation law shall be prescribed by the superintendent of insurance, and the superintendent of insurance may suspend or cancel the certificate issued by him authorizing said corporation to transact such insurance business at any time when in the judgment of the superintendent of insurance the reserves of said corporation are insufficient to insure and secure the payment of its policy obligations, and the superintendent of insurance may reinstate or renew said certificate whenever by assessment or otherwise said reserves have been increased to a sum sufficient in the judgment of the superintendent of insurance to insure and secure the payment of the policy obligations of such corporation.

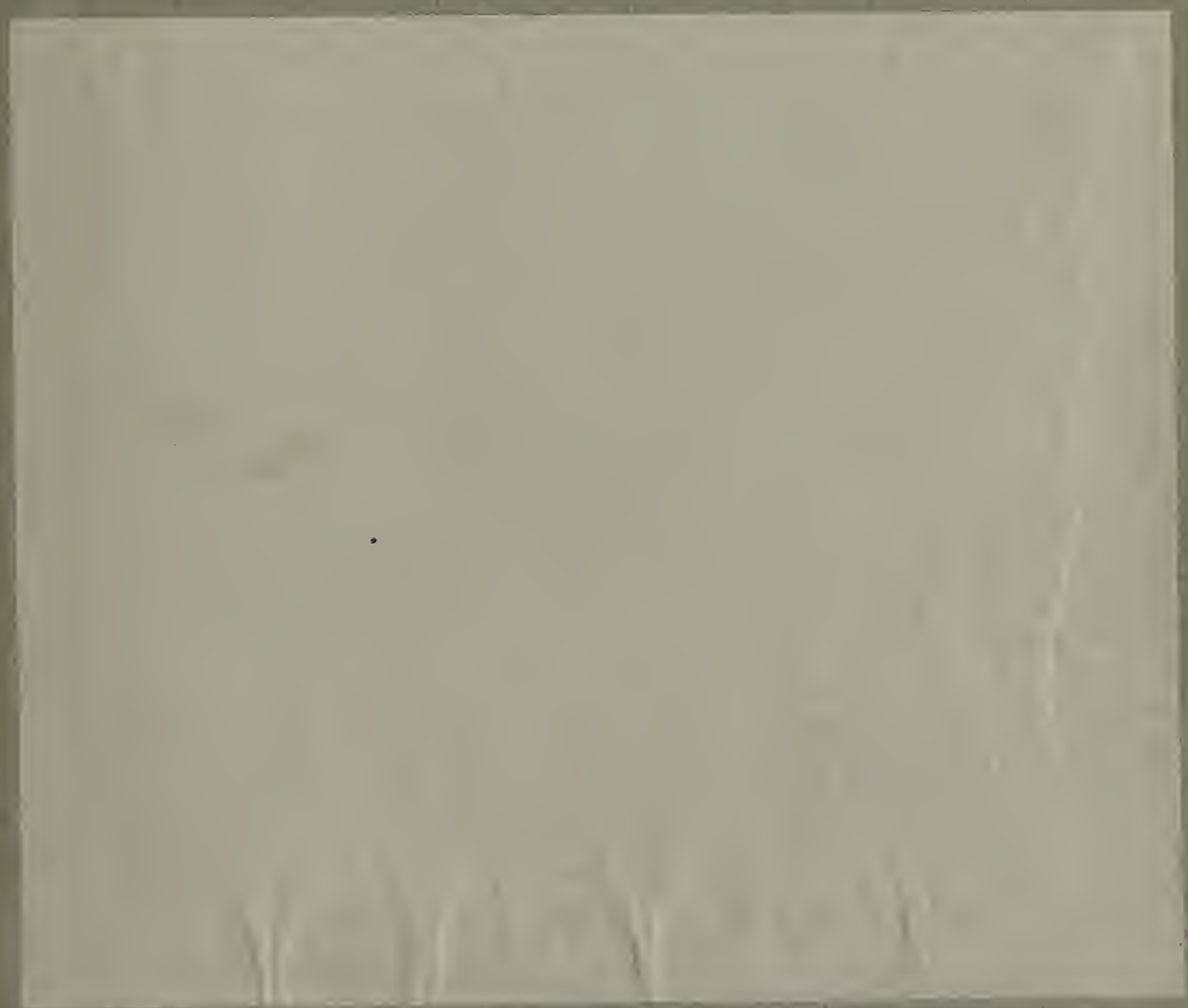
Sec. 192. Reports to and examinations by superintendent of insurance. Every such corporation shall make reports to the superintendent of insurance at the same times and in the same manner as are required from stock insurance companies transacting the same kind of business, and the superintendent of insurance may examine into the affairs of such corporation at any time, either personally or by any duly authorized examiner appointed by him, and the superintendent of insurance must make such an examination into the affairs of said corporation at least once in every two years.

Sec. 193. Prevention of accidents. The board of directors shall make and enforce reasonable rules and regulations not in conflict with the laws of the state for the prevention of accidents to the employees on the premises of members, and for this purpose the inspectors of the corporation shall have free access to all such premises during regular working hours. The policy of any member neglecting to provide suitable safety appliances as provided by law or as required by the board of directors may be canceled and terminated by the board of directors after giving to such member notice of cancellation ten days prior to its becoming effective.

Sec. 194. [As amended by Chapter 393, Laws of 1916.] Authorization of foreign mutual insurance corporations. After January first, nineteen hundred and seventeen, the superintendent of insurance may, in his discretion, issue a certificate of authority to a mutual corporation organized under the laws of another state to do such insurance in this state; provided that, in no event, shall authority be given to any such mutual corporation to do other kinds of business than those specified in this article. Such corporation shall be required to maintain the same reserves for the protection of members and employees as are required for domstic corporations authorized to transact the same kind of insurance, and shall at all times have and maintain a surplus over and above all liabilities, including unearned premiums and loss reserves, of not less than one hundred thousand dollars. If any such corporation shall not at all times have and maintain the surplus and reserves hereby required, the superintendent of insurance may, at any time, in his discretion, revoke its certificate of authority to do business in this state.

Sec. 2. This act shall take effect immediately.

Approved December 23, 1913.



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